United States Court of Appeals

for the Second Circuit

APPENDIX

76-6071

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B

W. J. USERY, JR., SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR, APPELLANT

v.

COLUMBIA UNIVERSITY, A Corporation, and WILLIAM
J. McGILL, Individually and as President of
COLUMBIA UNIVERSITY, APPELLEES

Appeal from the United States District Court
for the Southern District of New York

APPENDIX

VOLUME III



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JOSE LUIS REQUEIJO, called as a witness by the plaintiff, being first duly sworn, testified through the Spanish interpreter, Manuel Ras, as follows:

* * * * *

DIRECT EXAMINATION

BY MR. BERKE:

Q Mr. Requeijo, I understand you speak a little bit of English and primarily Spanish, so you may understand some of the questions I ask you in English, but I would ask you to

wait for the interpreter to repeat it to you in Spanish and that you then speak back to him in Spanish.

Where are you currently employed?

A In Mudd Building.

Q How long have you been employed there?

A Four years.

Q What job title position do you hold?

A I am classified as a heavy cleaner.

Q And what rooms are you assigned to clean?

A Specifically, the bathrooms.

Q How many such bathrooms?

A Thirty-five.

Q Are you assigned to clean these bathrooms alone?

A No, with another person which helps me.

Q What is the name of that person who helps you?

A Augusto Peralta.

Q How long has Mr. Peralta been helping you?

A Three weeks.

Q Before Mr. Peralta helped you, what was the name of the -- did anyone else help you?

A Yes, John Richmond.

Q For what period of time did John Richmond help you?

A I believe about two years.

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Q During the period of time that Mr. Richmond worked with you, what were your duties in the bathroom and what were Mr. Richmond's?

A At that time I was cleaning the places where you put the sanitary towels, and mopping the floors; from time to time, cleaning also the walls and wiping the toilets.

Q What did Mr. Richmond to?

A (In English) Clean and wash all the toilets.

Q Did Mr. Richmond do wet-mopping of the floors in the bathroom?

A Sometimes. Sometimes he did help me, but basically that was my duty to wet-mop at the floors.

Q And basically was it Mr. Richmond's basic duty to also wet-mop floors?

A Well, I think we came to an agreement between us to share the work together.

Q In that agreement, was it Mr. Richmond's basic duty to wet-mop floors?

A That's what I understood when they sent me to work with him, because they put me there to replace another person who was before working with him, and that person was doing this duties which I took over from him.

Q Answer this question yes or no --

MR. STITT: Now, if your Honor please, I don't

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believe that is proper direct examination.

THE COURT: Let's see what the whole question is.

MR. BERKE: I just don't think he --

THE COURT: Let's hear the whole question. Go ahead.

Q Was it Mr. Richmond's basic duty to wet-mop floors? Yes or no.

THE COURT: No, I will sustain the objection to that on the grounds of form.

Q When you worked together, how often did Mr. Richmond wet-mop floors?

A It would be hard to say that.

Q Currently, Mr. Requeijo, who wet-mops the bathroom floors?

A The other person working with me.

Q That is Mr. Peralta?

A Yes.

Q And has Mr. Peralta taken over what you used to do?

A Yes.

Q Have you taken over what Mr. Richmond used to do?

A Yes.

Q What do you now do?

A The same that Mr. Richmond used to do.

Q Will you please answer me specifically?

MR. STITT: Now, if your Honor please, I think we have had these questions put about five or six times, and I think we have had the answers. This is direct.

THE COURT: Let me ask you: Is it clear on the record what Mr. Richmond used to do?

MR. BERKE: I don't believe it is, your Honor. I just don't believe it is.

THE COURT: Why don't you ask him what he does.

Q What do you do, sir, now?

A I clean the toilet, the washing basins, the floors, and if I have to help the other fellow in mopping the floor, I do it, too.

Q But is it your every day duty to wet-mop the floor?

MR. STITT: Now, if your Honor please --

THE COURT: It seems to me I would call this being what Mr. Richmond --

MR. BERKE: Your Honor, there has been a division of duties here and I am having some trouble pulling it out.

MR. STITT: I object to how far one can go pulling a witness on direct examination.

THE COURT: Put another question.

Q Now, Mr. Requeijo, how many toilets are there in each of the bathrooms you clean?

A Some of the men's rooms have four, some have three,

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and the ladies' room normally two.

Q Are there any toilets, any bathrooms in Mudd Building with more than four toilets?

A Yes; one.

Q How many toilets does that have?

A Five.

Q How many bathrooms?

MR. STITT: Wait a second. I believe there was an addition to that answer.

A I believe five, but I am not sure.

Q And how many bathrooms in the building have four toilets?

A I have to think it over, because there are not all of them have four.

Q Can you give us your best estimate?

THE COURT: Mr. Berke, does anything hang in this case on that answer?

MR. BERKE: Your Honor, I am just trying to show --

THE COURT: The man's job involves toilets. Does it matter how it's broken down?

MR. BERKE: Your Honor, may I approach the bench?

THE COURT: What do you need to approach the bench for?

MR. BERKE: There has been some question of my speaking out in front of witnesses and I don't want to --

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THE COURT: He theoretically does not want to --

MR. STITT: Do we have an answer to that question?

A One for two.

MR. BERKE: I believe the university has distinguished between public and private bathrooms, between one-holers and larger bathrooms, and we are trying to establish here that this man is assigned to clean small bathrooms. We don't think that it's any different to mop a one-holer bathroom than to mop a ten-holer bathroom, but we are trying to establish that this man does not mop large bathrooms.

MR. STITT: The testimony is that this man and his co-worker clean all 35 lavatories, men and women, in the Mudd Building, which goes 14 floors.

MR. BERKE: They are small bathrooms each one.

MR. STITT: If they were large in your contention, counsellor, I would suggest that it might require two nights to do this work or, perhaps, four men instead of two.

THE COURT: In any event, you have your answer. Let's go on.

Q Aside from cleaning the bathrooms, what are your other duties?

A I do not believe there is any time left for anything else.

Q Do you handle the trash trucks?

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A When I was working with Mr. Richmond, I was helping to another gentleman to carry the trash trucks from the basement to the street sidewalk.

Q How much time did you spend in handling these trash trucks each night?

A There is not a specific time to dedicate to this; but when there are many, you can invest 15 minutes in it.

Q Do you still do this trash duty?

A No, Peralta is doing it now.

Q You do buffing and scrubbing machines?

A No.

Q Have you used such machines in the last four years of your employment?

A No, not probably all night. I did operate these machines during a certain time for a while, but mostly because my colleague, the fellow who was my team worker. working with my team, gave it to me so I would learn how to operate those machines.

Q When did you do the operation you are talking about?

A (In English) On -- it was a long time ago, I think before -- (Through the Interpreter) It was a long time ago, before I started working in the bathrooms.

Q How many years ago would you say?

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A About two years -- almost two years.

Q For how long a time did you operate the machine? How many days?

A Not even an hour.

Q What is that?

A Not even an hour -- one hour.

THE COURT: Is that an hour a day?

MR. BERKE: He said, "not even one hour."

A It was only one day. Not even one hour in one day.

Q How many hours within that one day?

A Less than one hour.

Q Have you ever handled 55-gallon drums of wax?

A Do you mean by that to take it from the truck that brings it to the building to the room where the janitor keeps it, or do you mean only to get it ready to use it?

Q All right, let me --

THE COURT: Mr. Berke means, whatever does he do with it?

Q Right. How many times has he touched it?

THE COURT: Whatever he does with it.

A You can imagine, every night I must touch it or handle it because I need it so that to clean the bathrooms.

Q How often have you brought it from the truck in

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the street into the building?

A Never.

Q How often have you lifted it from the floor on to its stand in the storeroom?

A The day workers put it in its place. Only if you run out of soap, then you have to take the empty one and put the full one in its place.

Q How often has he taken the empty one and put the full one in its place?

A About once every two months. It depends on the amount of soap that you are going to use and how dirty the bathrooms are, and if you have been assigned some other duties that needs more soap.

Q How long does it take to move the new, full one into the place of the empty one?

A Normally, I always look for somebody to help me to do that, and I would say about ten minutes.

Q How far do you move it when you do that?

A Never. It's too far away from the place where we have to put it. It's always in the same room.

Q Can he estimate the number of feet he moves it ther

A From one wall to the other wall where it is located which would be about four or five steps.

Q Have you ever shoveled snow?

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A No, never.

Q Have you ever shampooed rugs?

A No.

Q Have you ever hosed sidewalks?

A No.

Q Have you ever unloaded trucks?

A No.

Q Have you ever made any minor repairs?

A No.

Q Have you ever changed a light bulb?

A No.

Q Have you ever climbed a ladder?

A I have phobia against climbing up ladders. I can never climb a ladder.

Q Did you report this to your supervisor at any time?

A Once we had to wash the fixtures, and I told my supervisor that I couldn't do it, and I would fall. The ceiling was very high.

Q Was your pay in any way reduced at that time?

A No, there was no reason for it.

Q You were simply assigned to work where you didn't have to do it?

A No, that was an extra job that they asked me to do.

CROSS-EXAMINATION

BY MR. STITT:

Q Mr. Requeijo, would you pronounce your name for me so I use it properly?

A Requeijo.

Q Mr. Requeijo, you have testified that your duty at Mudd involves the cleaning of 35 bathrooms or lavatories?

A Yes, sir.

Q This requires you and a helper your entire shift?

A Obviously, one person alone could not do it.

Q And this has always been a two-man operation, has it not?

A Since I arrived there, I always saw two men working on that job.

Q Would you tell us what you and your co-worker -- whether it was Mr. Richmond or Mr. Peralta -- what the two of you do when you first arrive at Mudd, prior to starting on that first lavatory.

A First one gathers all the materials that one needs: the truck, the mops, the buckets, brushes, everything that he is going to need for the job.

Q Would you describe this truck for us? Where do you pick up your truck?

A All this is kept in a room that is called the

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janitor closet.

Q Are there two pails that you use with this truck?

A Yes.

Q Are these pails about 18 inches deep and about 15 inches wide?

A Well, I have never measured them, but they are, yes wide and deep.

Q About those dimensions that I just mentioned?

A What I could tell you is that when they are full of water, they are heavy.

Q That is what I want to know. Are these called --

MR. BERKE: I object to that and ask that it be stricken.

MR. STITT: No, no, I will pursue it.

MR. BERKE: It's been stricken elsewhere.

THE COURT: Yes, I will strike it.

Q Are these called 44-quart pails?

A I just learned now this moment that they have this name; they are called that way.

Q That refreshes your recollection, does it?

MS. LIBOW: Your Honor, we object to his rephrasing the answers of the witness.

A I never heard.

MS. LIBOW: Mr. Stitt does it regularly.

MR. STITT: I apologize to the witness regularly.

THE COURT: I misunderstood as well. Let me ask this: I will ask the Secretary of Labor tomorrow to bring in a pail similar to what this man uses and let's put some water in it and let's put it on a scale.

Q Do you fill one of these pails with a cleaning solution?

MR. BERKE: Your Honor, Mr. Stitt, would you please not go on while the court is making a request.

MR. STITT: I am sorry, your Honor.

MR. BERKE: In the first instance, your Honor, we have no access to such pail.

THE COURT: I am directing the witness to produce his pail or the equivalent for the Secretary of Labor's counsel to bring in, and we will fill it with water and we will weigh it.

Q These two pails that you have on your truck, Mr. Requeijo, do you fill one with a cleaning solution?

A Yes, one of them is filled up with a cleaning solution.

Q Do you mix this solution yourself or your partner?

A Yes, I fill up one in the basement, and upstairs he fills up the other one.

THE COURT: How far from the top do you put the fluid in?

A You couldn't fill it up to the top because you have to go from the basement upstairs on the elevator, it will spill, and then, well, I have to pick up the water; so we usually put half bucketful, and then we have to change the water also.

Q All right, now, do you fill up the other bucket with hot water for your rinsing, or halfway full?

A Yes, sir, the same amount, the same level; more or less both.

Q Does the rinsing bucket also have a wringer attachment?

A Both of them, they have it, one each.

THE COURT: Is that going to be on the bucket we shall receive?

MS. LIBOW: Your Honor, I would have strongly

objected at this time to the production of any heavy equipment--heavy in quotes--that the janitors use without the production of the equipment that the maid use; because I think that the whole question here is the comparison of the weights.

THE COURT: I am only dealing with Mr. Berke's objection to the weight of this particular bucket. Overruled.

MS. LIBOW: What we are going to have is just the janitor's equipment then and not any of the equipment used by the light cleaners.

THE COURT: I am not dealing with an offer of that. I am dealing with an objection to a question of Mr. Stitt's which I sustained because it called for a characterization.

Q After you fill these two buckets or half-fill them, solution in one and hot water in another, how do you get your dolly from the basement up to wherever you are going to go?

A Both buckets are used from the first floor. In the basement we use only one bucket -- pails.

Q Do you also use these two buckets on other floors going up to the 13th?

A Yes, always.

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Q In addition to the two pails, do you have two mops and soap?

A Yes.

Q Are they 24-ounce mops or are they 32-ounce mops? Can you describe them in those terms?

A Twenty-four ounces.

Q It's your testimony these are women's rooms as well as men's rooms that you clean?

A Yes.

Q This is done every night?

A Yes, yes, every night.

Q And every night you take out some moments to help with the garbage removal from Mudd?

A (Answer in Spanish without interpretation of the question:)
No, the other teammate of mine does that.

Q Let me rephrase the question: During your entire service at the Mudd Building, there comes a point each night when one member of your team, whether it was you or Mr. Peralta or Mr. Richmond, takes time off and helps out with the garbage detail.

A Yes.

Q So on your testimony, garbage has to be pushed out of the Mudd Building each night?

A Yes.

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Q And it's the janitors who do that or the heavy cleaners?

A Yes.

Q Do any of the maids or light cleaners help push out those trucks?

A I had never seen any female or light cleaners doing that job of pushing that.

Q Have you ever seen any females or light cleaners help clean those heads that you work in?

MR. RAS: Heads?

Q Lavatories.

A I have never seen them.

Q Tell me how the garbage truck -- first of all, could you describe for us the trucks that are loaded with trash each night?

A They are loaded to the top.

Q Are they about six feet high?

A Yes.

Q Are they about two-and-a-half to three feet wide?

A Yes.

Q And are they about six to eight feet long?

A Yes.

Q When you were doing that pushing, did you do it alone or did you have help or was it done sometimes alone

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and sometimes with assistance?

A We always have somebody's help.

Q Now, you have testified that on occasion you did some work with floor machines?

A I used to.

Q When is the first time you were shown a floor machine during your lifetime?

A When I started to work at Columbia.

Q Did you receive any instruction in the operation of that machine?

A Well, I did not receive instructions. I simply saw what my colleague, my partner on the job, was doing with the machines.

Q Is there wet-mopping done at the Mudd Building, other than the lavatories that you mentioned, by other janitors than yourself?

A If it was necessary to do the job and one is assigned to do it, you have to do it.

Q Is it your testimony, Mr. Requeijo, that the corridors, the stairways, and the lobby at Mudd, on occasion, have to be wet-mopped?

A Yes, somebody has to do it.

Q And somebody -- that wet-mopping has to be done each night, isn't that so?

A Sometimes, as it is necessary. I do not know if it's every night or not.

Q And is it the janitors that you have seen do this wet-mopping?

A Yes.

Q Not the maids or the light cleaners?

A No.

MR. STITT: If I may have a moment, your Honor.

THE COURT: You may.

Q Mr. Requeijo, would you give us your weight, height and age, please?

MR. BERKE: Objection, your Honor.

THE COURT: Overruled.

A Thirty-two years old, five-feet-six inches, and 140 pounds.

Q Would you tell us what work you did before you came with Columbia University?

A Hard labor; cutting sugar cane.

Q Is this down in Puerto Rico?

A (In English) In Cuba. It was mandatory to leave the country.

(Through the Interpreter) To leave the country, it was mandatory as a condition to leave the country to go to the cane fields to cut sugar cane.

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Q Was that the sole work that you had done before you came to Columbia -- cutting cane?

A No, I was a bookkeeper in Cuba.

Q Any other jobs that you held?

A No.

MR. STITT: Your Honor, I have no further questions of this witness.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. BERKE:

Q Mr. Requeijo, these pails that you use, how often must you lift them?

A Well, every time I had to change water, I had to lift them.

Q You lift them a distance of how far?

A Not a long distance -- about five feet.

Q Is it to say you lift them from the sink to the cart?

A Yes.

Q How close can you push the cart to the sink?

A In every floor, the water basins for the janitors and for the services are the same room where you keep the cart. If that room is too filled to fill up the pail, then you have to move it outside and leave it on the hallway.

Q What is the most usual circumstance that you can bring the cart into that little room or that you have to leave it out in the hall?

A To have to leave it at the hallway.

Q Then the distance of five feet that you spoke about, is that the distance from the sink inside the room to the cart out in the hallway?

A That's the distance where I am in the bathroom to the place where I have to go to fill up the bucket.

Q What is the distance from the sink in which you fill the pail to the cart left in the hallway?

A More or less that distance -- five feet.

Q When you move the pails around the hallway, generally from bathroom to bathroom, are you carrying them?

A Well, one of us has to carry them on the truck.

Q When you say "carry them," you mean push the truck or actually physically carry the pails?

A Pushing the truck.

Q When you take the pails up and down the steps, do you do so on an elevator?

A Yes, if there is no elevator available, the thing doesn't get done.

Q Repeat.

A If it's not elevator available, the job is not done

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* * * * * [1401]

REDIRECT EXAMINATION

BY MS. LIBOW:

Q Mr. Requeijo, do you remember when you started working at Columbia University?

A Yes.

Q When was it?

A May 25, 1970.

* * * * *

MR. STITT: [1405]

* * * * *

[1406]

Last, I draw attention to the following items which were brought as a result of requests made by Labor Department adversaries, and I believe the court, during the examination yesterday afternoon of Mr. Requeijo.

They consist of:

One, a dolly with a handle attached;

Second, two buckets which I would represent are approximately 15-inches across and 15-inches down; and

Third, with regard to each bucket, what I would call a wringer or wringer device.

There are five items in all.

I also call attention to some red Xs on each handle that have some writing which were put on these in order to identify them as the equipment used by Mr. Requeijo.

Now, I was not there, but I know this request was made, and it's my belief that those instructions were carried out. I believe that this could be confirmed by the Labor Department if they so wish, by contacting Mr. Requeijo.

THE COURT: Mr. Berke, any questions about that?

[1407]

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MR. BERKE: Your Honor, I instructed Mr. Requeijo to call me this morning and tell me what was done with his equipment. He did not tell me about any red Xs, but he did say that he took two mop pails, two wringers, and a dolly down to Mr. Shervington's office.

I am inclined to accept Mr. Stitt's representation that these two pails and two wringers and dolly are the ones which Mr. Requeijo was speaking of, and on Mr. Stitt's representation, I will accept that.

* * * * *

* * * * * [1409]

K E I T H A L B E R T G U B B, called as a witness by the plaintiff, U. S. Dept. of Labor, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. RODENHAUSEN:

Q Mr. Gubb, would you please state your address for the record?

A My home address?

Q Yes, please.

A 32 Carol Court, Glen Rock, New Jersey.

Q Mr. Gubb, where are you presently employed?

A With the Clarke-Gravely Corporation, division, Clarke Floor Machine Company, at 111 Leroy Street, here in New York.

Q What is your title?

A I am the divisional sales manager for New York and New Jersey.

Q Would you give us a brief statement of your educational and business background?

A I started in the maintenance equipment sales in 1955 for nine years as a sanitation supply salesman, selling

machines and buckets and wringers and anything to do with maintenance.

In 1964, I became a field sales manager.

In 1965, I joined the Advance Floor Machine Company as a regional sales manager for Eastern Canada, located in Montreal; and in 1973, January, joined the Clarke Floor Machine Company in Pittsburgh.

Q During your work with the sanitation supply business, what clients did you service on behalf of that company?

A Hospitals and schools and institutions and any place with a floor.

Q Did you have occasion to work with floor machines?

A Yes.

Q What was -- would you describe for us what you did with floor machines in those jobs?

A We would try to sell the floor machine to a school or hospital or an institution, whatever, by taking the machine and demonstrating it to them and showing them what it would do, and then trying to achieve the order.

Q What are your present duties with Clarke Floor Machine?

A I am presently responsible for our sales penetration in the New York and New Jersey area, the hiring of our

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sales personnel. We presently have three, holding sales meetings or seminars with our distributor network, who sell the equipment to the sanitation -- to the hospitals and schools.

Q Have you personally used Clarke Machines -- Clarke Floor Machines?

A Many times, many times, yes.

* * * * * [1413]

Q Mr. Gubb, what changes, if any, have been made in the Clarke Floor Machine 2300 model in the last ten years?

A I'd have to use this as an illustration.

The red here is vinyl bumpers. About five years ago that was introduced, as you can see it on that machine. Before that, there was strictly a thin band of vinyl only about half-an-inch wide around the top and bottom of the machine. Now, the whole motor casing and the brush housing is encased with a vinyl bumper.

Q I would ask you to please put the letter B where the vinyl bumper has been added.

(Witness complies.)

A Two spots here.

Q Will you tell us what, if any, addition this bumper has had on the operation of the machine?

A No effect at all. It's merely to protect furniture, if they are working around desks, and that sort of thing; so it does not mark furniture.

* * * * *

[1415]

Q Would you now describe, Mr. Gubb, for the court, the buffing operation of the Clarke 2300? Would you tell us what kind of information an operator needs to be able to operate the buffing machine?

A He has to put the brush on. Then he must lower the handle to the comfortable operating position, must plug

the machine in the wall, and then squeeze a trigger to turn the machine on.

Q Would it assist your description in any way to demonstrate the operation of this machine to the court?

A Yes.

MS. RODENHAUSEN: I would ask that the witness be given an opportunity to --

THE COURT: Why don't you finish at this point such testimony as you think is appropriate before we do that, so we have exhausted as far as we can tell. There may be some following the demonstration, but as far as we can tell, let's exhaust the testimony before we have the demonstration.

Q Mr. Gubb, having the picture before you -- and if you need to refer to any of that language in there, would you please tell us how you start the machine? How does one start the 2300 machine?

A You squeeze the trigger on the top of the handle after it's plugged in the wall.

Q Is the trigger labeled on the diagram that you are referring to?

A Yes.

THE COURT: It's called the non-conductive switch lever.

A Switch lever, yes.

Q What do you do next after you squeeze the trigger?

A Actually, if we are going to start to operate the machine, we have to lower the handle, go back to put the handle in the operating position with the brush on and plug it in and then we would squeeze the trigger -- the lever.

Q When you are talking about lowering the handle, what in the diagram are you referring to? The shaft?

A There is a locking, slide-in lever here -- die-cast, locking slide which enables you to lower the handle to the comfortable position.

Q How does it operate or control the movement of the machine once it has been engaged?

A By lowering and raising the handle, makes the machine go to the left or right, whichever -- I will show you when we demonstrate it.

Q How does the machine move? Could you tell us a little bit more fully how the machine proceeds forward or backward?

A The machine is sitting flat on the floor, and we teach the operator to have the machine sitting flat. To move to the left or right, we teach him to lower and raise; and the lowering and raising is so minute, that we actually

say to them, "Think up and down, don't actually move it up and down," because people would tend to over-exaggerate and push up and lift down. It's such a minute fraction of movement and what you are doing is increasing the pressure or weight of the machine on to one edge of the brush, which causes it to go to the left, and when you raise it you put it on the other edge which causes it to go right. If you want to go straight forward, then you keep the machine in the flat position and then you can just walk straight ahead with it.

Q When the machine is not plugged in or not in operation, how is it removed from the machine?

A You would raise the handle to the upright position, and then tip the machine back over onto the large transport wheels.

Q Then what would you do?

A Then you would just wheel it along the floor.

Q When the machine is plugged in and is in operation, how does the operator stop the machine?

A By releasing the switch levers.

Q Does the machine have different speeds?

A No, the machine operates at one speed: 175 r.p.m. The brush speed is 175 r.p.m.

Q How is the operation of the machine affected by,

for example, bumping into a wall if the operator moves the machine into a wall?

A It would just bounce off.

MR. STITT: You are referring to the machine with the vinyl protection?

A Yes, yes.

Q What kind of plug does the machine have?

A This one has a three-pronged plus with a ground wire.

Q The machine has different attachments that can be used in addition to the buffing operation?

A Yes, you can use scrubbing brushes, scouring, sanding, steel wire; many, many applications. And you'd have to tip the machine over onto its back and install the different attachments.

Q Would the operator lay the machine down totally on the floor so the handle is resting on the floor?

A Yes.

Q Then the operator would have to rock it back up?

A Yes.

Q What else does the operator need to know, if anything, to run the machine?

MR. STITT: I object to the form of that question.

THE COURT: Overruled.

MS. RODENHAUSEN: Would you repeat the question, please?

(Question read.)

A I would think nothing.

Q In what ways, if any, Mr. Gubb, does the operation of the 2300 floor machine differ from the operation of the 2000 model or the 1700 model?

A No different.

Q Could you explain that to the court?

A They operate exactly the same: the lowering of the handle, the plugging the machine in, the installation of the brush, squeezing of the switch levers. It's identical.

Q In what ways are the different models different then? You have different model numbers. Tell us how the --

A Just the brush sizes and the horsepower of the motor.

Q What particular features of this machine do you as an instructor emphasize to a new operator in their learning to control the operation of the machine?

A Basically the up-and-down movement of the handle to control the machine from left to right; that they can operate the machine by either switch lever from either side; they can use the left hand or right hand or one hand or two

hands; and when they leave the machine, they should pull the plug in case someone comes along and just squeezes the trigger.

Q What are the consequences of an operator not releasing the control lever?

A If they did not know how; they had not been taught? I don't understand what you mean. The machine will keep going.

Q Pardon?

A The machine will keep going if they keep their hands on the switch lever.

Q You tell us the machine has one speed. What is the speed of the machine?

A 175 r.p.m.

Q What does that mean in terms of movement of the machine on its own with someone squeezing the trigger -- the control lever -- so it is engaged.

THE COURT: I don't think that question could --

THE WITNESS: I don't know how I can answer.

THE COURT: As I understand what Mr. Gubb is saying, the machine steers itself, depending upon whether you adjust the pressure up or down. The wheel is going at always the same speed.

THE WITNESS: Yes.

THE COURT: And depending upon whether you exercise a little pressure up or down, it will turn to the right or left for you. Am I correct in that?

THE WITNESS: Exactly; yes.

Q Let me put it this way, Mr. Gubb: If a person, in nervousness or apprehension, did not let go of the machine, could the person be dragged with the machine by the movement of the machine on its own?

A Not likely. They would be dragged because then they would become the fulcrum and the machine would tend to swing around them. They would probably stand stationary, but they would end up going in a circle if they held on and the machine just kept going.

Q What does the operator have to know to stop that situation?

A Let go the switch.

THE COURT: Take his hands off?

THE WITNESS: Drop it; let go.

Q Can the operation of the machine improve with practice and experience?

A Oh, yes.

Q How so? Will you tell us about that?

A They become very proficient. You can do it no hands; you can wrap the cord around and do it with one

finger, or you can become very cocky with the machine once they become experienced with it; yes.

Q In the course of your employ with Clarke Machine, have you had occasion to train groups of persons?

A Yes.

Q Have you trained custodial employees?

A In New York -- I honestly couldn't say if I have actually been out and trained anyone in custodial area in New York. I have trained the people who train the custodians.

Q When you have not worked in New York, have you worked for Clarke Floor Machine in any other locations?

A In Pittsburgh; yes.

Q And when you were in Pittsburgh, what was your job there?

A I was a regional manager there, and I did train more there, yes, because I was more in the sales end of it at that time.

Q Did you work with the same 2300 Clarke Floor Machine?

A Yes.

Q Did you have occasion in your job in Pittsburgh to work with custodial employees?

A Yes.

Q And show them the operation of the machine?

A Yes.

Q Could you describe for us how long it would take -- well describe the training session, if you would? Tell us if there is any difference between the way in which you instructed these employees as opposed to other ways you now told the court to run the machine.

A No, we would spend a little more time with them, being in a certain position as we're training them, down in front of the machine, so that when I am in front of the machine, I have control no matter what they do. It just can't get away.

After a minute or so, they are kind of running the machine. Then I will take my hands off and then they are doing it on their own and then I kind of stand beside them for a minute or so, and then they kind of get a little more familiar with it and they are kind of going by themselves.

Q How long does it take for the employees that you have trained in this session to run the machine without your assistance?

A I'd say three or four minutes.

Q What kind of maintenance does this floor machine 2300 model require?

A Nothing. Just the wiping off with a damp cloth if

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they want to keep it shiny; that's all. Everything is sealed bearings and there is no maintenance on floor machines.

Q Can you just describe for us what the principle of operation is of this floor machine? You have testified to showing how to demonstrate it. Tell us how it operates mechanically.

A On our -- this model here?

Q On the Clarke Machine.

A You have an electric motor. In this case, it's a one-and-a-half horsepower electric motor that turns at 1750 or 1725 -- I am not exactly sure of the r.p.m. of that motor. We use a planetary gear which reduces the r.p.m.s of the motor down to the brush to 175 r.p.m. In other words, a ten-to-one ratio is normal in all floor machines. That is what makes the machine go.

Q What other brands of floor machines have you worked with?

A By names?

Q Yes, if you know.

A There's got to be 40 different brands: There is Clarke and there is Advance and there is World; there is Kent; there is the Lalonde; there is Pullman; National Super-Service; Tornado; quite a few.

I don't know if I have run every machine, but I

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am sure, over the 20 years, I am sure I have. Maybe I have missed some of them.

Q Are you familiar with the operational mechanisms in these other brands that you have told us about?

A Basically, yes. They would -- some of them use different drive systems. Some of them use belts. Some of them use a different type of gear. There are chain drives. They all have their own little peculiarity, but they all operate on the same idea.

* * * * *

[1428]

MS. RODENHAUSEN: That concludes my examination of this witness with the exception of his demonstration of the machine -- the Clarke Floor Machine.

THE COURT: All right.

Plaintiffs Walker, any examination?

MS. GOODMAN: None at this time.

THE COURT: Mr. Stitt, do you want to cross-examine at this point?

MR. STITT: I would think it might be best if I deferred my cross until after the demonstration, your Honor.

THE COURT: All right. Do it that way.

MS. RODENHAUSEN: Your Honor, there is a plug

here right in the front of the witness box which this machine will take, and the cord will stretch out into the hallway if that will be convenient for the court.

(In the hallway outside the courtroom; all counsel present.)

THE WITNESS: What I will do now, then, is:

The way we would teach a custodian how to get the machine ready to operate, because it would be different if we were teaching a salesman how to learn himself.

We have it plugged in. We just plugged it in. We then lay the machine down on its back, and we also have three slots here and three lugs on the bottom of the machine. We straddle it this way. You can see what you are doing better. Just line them up and give it a twist and that locks the brush in. To remove it, you just pull it the other way.

THE COURT: You put it in against the way it's going to turn.

THE WITNESS: Exactly; yes.

MS. ROSENHAUSEN: Is that an attachment you use for buffing?

THE WITNESS: This is a polishing brush. The difference -- That is exactly why we teach them here, because you get your fingers -- the scrubbing brush is the same,

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only it's a stiffer bristle. This is softer.

We raise the machine, you know, the wheels then come off the floor because the push will be under. This is the handle lock. Lower it to a comfortable position, and then we teach them, instead of bending and all that, just to push it to the side and lock it with their foot.

Now the machine is ready to go.

(The witness turned the machine on.)

THE WITNESS: Squeezing handle one, we hold on with two hands -- one hand. Now, if I lift the machine just a little bit this way, it goes this way; right. If I push down, it goes left. If I just keep it flat, I can walk straight ahead or back (Indicating). The cord, in a case like this, we teach them: plug it in and work away from it.

Now, if they are going to polish this corridor -- I would, if I was going to polish this corridor, I would start right there and work away from the courtroom. I always work in a swinging action like this. A professional will put the cord over his shoulder also (Indicating). Then they work this way. The cord is behind him, and they just swing the machine from side to side and that polishes.

Then as they get to know a machine, after a while they can make it do just about anything and really get contr

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You can lower the handle and run it from down here (Indicating) by a couple of fingers.

Because of the balance, you see, if I want to make it go right or go left, I can make it do that by pushing or lifting.

THE COURT: Can I try?

(The court operated the machine.)

THE WITNESS: Now, by my getting down here, I have control.

THE COURT: You can protect everything in the room.

THE WITNESS: Now, if you squeeze the triggers --

(The court turns machine on.)

THE WITNESS: -- just think up, think down, very slightly. You don't actually move it. Just think up and down.

(The court operated the machine.)

THE WITNESS: A little bit too much down.

THE COURT: It does have a tendency to pull to my left.

(The court operated the machine.)

THE COURT: There is a little tendency for this to pull.

THE WITNESS: There is torque, but if you had the

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machine sitting flat, you just lift up on the handle a little bit.

(The court operated the machine.)

THE WITNESS: Just lift up a little bit, not too much, and down a little.

(The court operated the machine.)

THE COURT: There is a modest amount of torque to the left.

THE WITNESS: To the left, because the brush --

THE COURT: Because of the operation of the machine?

THE WITNESS: Because of the brush turning counter-clockwise.

Now, this is what happens when you let go.

(The court removed the brush from the machine and then reinserted it into the machine.)

THE WITNESS: Would you like one of the ladies to run it?

(Ms. Libow operated the machine.)

THE WITNESS: We would lower the handle. The one thing I ask you to remember is: Don't squeeze the trigger until you are ready to operate it.

(Ms. Libow operated the machine.)

THE WITNESS: Now, lift up on the handle a little

bit, just up a bit; up, up.

(Ms. Libow operated the machine.)

THE WITNESS: Lift it up. There.

(Ms. Libow continued to operate the machine.)

THE WITNESS: Get it so it's sitting flat and hold it straight. Just think up and down; down a little, down just a bit. It takes some few minutes; you've just got to play with it.

Once they do get it and understand how to pull it up and down, you can really accentuate the lifting once you know what to do. They do heel, they take it over on its sides and that takes off marks.

THE COURT: Mr. Gubb, in different operations using different pads, is there a difference in the strength required or is it the same? In other words, I take it you can put on here a steel wool pad.

THE WITNESS: Yes.

THE COURT: If you want to strip wax off a floor.

THE WITNESS: Yes.

THE COURT: Does that give you a different operating -- obviously its the principle remains the same but --

THE WITNESS: Yes, and once the operator becomes able to get it sitting flat, that seems to be the most difficult thing, just to get it in that position where it

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isn't moving. Then, regardless of what they have on there, once it's sitting flat, the operation isn't difficult.

Now, it would be more grit from a sanding machine.

THE COURT: That might give you more torque from the handle?

THE WITNESS: Right, but as long as you have it sitting flat, you just operate it and you get to know. Everyone tends to want to do it too much up and down, and it's just very, very lightly you have to do it.

THE COURT: Anybody else like to operate it?

MR. BERKE: I'd like to try it.

MS. LIBOW: Mr. Stitt?

MR. STITT: I will pass it up, your Honor.

(Mr. Berke operated the machine.)

THE WITNESS: Then we kind of play with it and let them swing it back and forth, and usually then after that, the place to stand is on this side, once they have got it sitting flat, because the torque is to the left, and if it's going to swing away on them, you can stop it here.

MS. RODENHAUSEN: Your Honor, would you like to try to roll it when it's on it's wheels?

THE WITNESS: I would suggest the plug be pulled at that time. We do tell them: When the machine is in this position, pull the plug, because if someone squeezes --

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all right -- the plug is removed.

(The court tilted the machine.)

THE WITNESS: Also, we teach them to remove the brush. We don't want the machine left with the brush. They never pick them up and carry them; they are too heavy for that. They then can go on stairs, but we don't recommend that either; just elevators.

THE COURT: All right. Shall we adjourn back to the courtroom?

(In the courtroom.)

CROSS-EXAMINATION

BY MR. STITT:

Q Mr. Gubb, I don't believe you were asked to give us a statement of your educational background. Would you do that for us?

A High school.

Q Was that up in Canada?

A Yes; North Bay, Ontario.

Q While you were up in Canada, you worked for the Advance Floor Machine Company?

A In one position, yes.

Q At that time, did you sell their industrial cleaning equipment?

A Yes.

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Q And you, of course, became familiar with their specifications and prices and what they could do and how they operate?

A Yes.

Q When were you first asked to testify in this case, Mr. Gubb?

A A week ago. May I ask? I forget the date.

MS. RODENHAUSEN: If your Honor please, it was last Tuesday.

A Last Tuesday.

Q You are with the Clarke sales office in Brooklyn, and you have been there for eight months?

A No, in Manhattan on 111 Leroy Street.

Q I see. How long have you been in the New York area?

A A year last August.

Q Before that Pittsburgh and before that Canada?

A Before that Cleveland.

Q Have you ever been to the Columbia University campus?

A Not on the grounds. I guess I have been by it, yes.

Q You have been by it. I believe you testified on direct examination that institutions such as Columbia were

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objects of your sales effort?

A Yes.

Q And also your competitors?

A Yes.

Q That would be true of colleges and universities generally?

A Yes.

Q And your competitors would include General and Ponsell?

A Yes.

Q They also make floor machines similar to Clarke?

A Yes.

Q You also solicit sales of office buildings and hospitals?

A Yes.

Q Government buildings?

A Yes.

Q These are institutions whose hallways, elevators, lobbies, and lavatories are used by hundreds or even thousands of people each day?

A Yes.

Q Is it true that the greater use given an area, the greater concentration of dirt and grime?

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A Yes.

Q Therefore, the greater cleaning effort required?

MS. RODENHAUSEN: Objection.

MR. GOODMAN: Objection.

MS. RODENHAUSEN: Objection to the word "effort," your Honor.

Q If you have more dirt and more grime, and it's more concentrated, it requires a greater cleaning effort to remove that dirt and that grime; isn't that so?

MS. GOODMAN: Objection, your Honor.

THE COURT: No, overruled. I will permit it. You may inquire on redirect if you wish.

A Yes.

* * * * *

[1441]

Q Is it true that the 17-inch machine which is smaller than the one you have shown us, weighs approximately 96 pounds?

A May I check the weight on the literature?

Q Yes, please use any document that you may have, to refresh your recollection, Mr. Gubb.

A The 17-inch weighs 112 pounds.

Q Would an earlier model, perhaps?

A I am sorry; it's 102. That is the shipping weight

is 112.

Q All right, that is 175 revolutions per minute?

A Brush speed.

Q The disk you showed us would go around 175 times each minute?

A Right.

Q And that 17-incher has a three-quarter-horsepower motor?

A Yes.

Q What are the characteristics of the 23-inch?

A In brush speed, the same, 175. Horsepower: the motor is one-and-a-half. The weight is 123 pounds.

Q If there was a 19-inch or 20-inch model, what would be the weight and horsepower of those machines?

A Twenty-inch is one horsepower. The weight if 107 pounds. The r.p.m. of the brush is 175.

Q Have these weights remained generally the same over the years as the model has been changed?

A Up and down -- up a few pounds or -- yes, they do vary a little bit -- very slight.

Q Give or take two or three pounds?

A Yes.

* * * * *

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[1443]

MR. STITT: Your Honor, I would now call attention to Columbia document, copy of which was marked for identification at Mr. Nye's examination. This is a Columbia University Department of Buildings and Grounds training program for service employees, 1965; and I am going to ask that this excerpt of two pages, labeled Equipment VI Floor Machines, dated February 5, 1965, be marked for identification.

[1444]

mblm-206 Gubb-cross

(Defendant University Exhibit O marked for identification.)

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MR. BERKE: Your Honor, this manual was shown to Mr. Nye during his deposition. He said he had never seen it before.

MR. STITT: Your investigator, Mr. Barish, was given a copy of this entire document last June, 1974.

MR. BERKE: That does not authenticate it.

THE COURT: Whether or not Mr. Nye has seen it may or may not be relevant.

MR. BERKE: We're not prepared to stipulate that it's ever been in use, that it is accurate.

THE COURT: I will permit it subject to connection. I take it we haven't come to Columbia's case. If somebody is prepared to say that this is an instrument given to trainees in this machine, then it is connected. If it isn't connected, it will be stricken.

MS. RODENHAUSEN: Your Honor, may I just refer t court's attention to the testimony of Mr. Peralta who testified he received no written instructions whatsoever --

THE COURT: All right, yes.

MS. RODENHAUSEN: -- in his training period.

MS. GOODMAN: Your Honor, also, I believe that

this witness is not here as an expert but as somebody who demonstrates and has actual knowledge.

THE COURT: He is here as an expert. That is the only basis he is here.

MR. STITT: Of course he is. I hope he is getting a fee for his time.

THE COURT: He is not here on any other basis. He is not a fact witness as to anything that happened at Columbia?

MS. GOODMAN: He is here as a fact witness as to the operation and use of a particular machine.

THE COURT: The particular machine; and he is being offered as an expert in that machine.

MS. GOODMAN: He is not being offered as an expert in how you supervisor cleaning personnel.

THE COURT: In any event, I will permit examination to proceed, as I have a feeling it is going to. If it goes beyond that, we'll have another matter.

Go ahead.

Q Starting at the top. The statement: "Our department uses several different makes of floor machines -- Clarke, General, and Ponsell."

You recognize that they are all recognized types, is that right?

A Yes.

Q Continuing: "Although they may appear different, they all do the same jobs in just about the same way, depending on the attachment used." That's true, isn't it?

A Yes.

Q "They can polish, scrub, or strip floors faster and better than any man could do by hand." Is that true?

A True.

Q Now, going on to the use of the machine: "All our floor machines are equipped with two wheels that are used to move the machines to and from the job. When the machine is in use, the wheels are lifted up out of the way." I think that word "of" should have been inserted; is that correct?

A Yes.

Q Continuing: "Whenever you take a machine from the storeroom to do a job, remember to bring with it all necessary brushes, pads, and attachments you will need." That is standard procedure, isn't it?

A Yes.

Q Continuing: "Plug the machine in the proper wall outlet, using the three-way plug. If the wall receptacles will not take a three-way plug, use an adapter, but be sure to fasten the ground with the outlet screw." Is that

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recognized procedure?

A Yes.

Q "If the floor machine is not grounded, you could get a shock." Is that true?

A Possible.

Q That could happen?

A Possible.

Q Continuing: "When mounting" --

THE COURT: Mr. Gubb, let me stop you. That is the purpose of that third prong in the plug, isn't it?

THE WITNESS: It's not likely, your Honor, you are going to get a shock unless you were standing in water. If you were scrubbing, if you were polishing, you would not get a shock, no.

THE COURT: If you were standing in water, you could?

THE WITNESS: You could short out if there was a defect in the wiring.

Q If the halls were wet or some --

A Water, yes.

Q -- shampooing was going on with these machines?

A On the carpet?

Q Yes.

A It's possible, not likely though because you notice

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the handles are insulated.

Q In any event, it is possible and you'd want to instruct your men to guard against that wouldn't you?

A Yes.

THE COURT: All right. Go ahead.

Q Continuing: "When mounting a brush or driving pad on the floor of the machine, lower the wheels; then tilt the machine back and put the brush in place by hand." Is that standard procedure?

A Yes.

Q I believe you showed us that operation out in the hallway, didn't you?

A Yes, this is quite antiquated. As you notice, the machines used to have wheels that lowered on somebody's models.

Q This document dated February 5, 1965 --

A Yes. Now you don't lower the wheels.

MR. BERKE: Objection to that, your Honor. We don't know when the document was actually issued. It isn't in evidence.

THE COURT: It is being admitted subject to connection.

MR. STITT: Just to protect the record and this witness and also the document, which may or may not have

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some dignity.

Q Also, if a particular institution had a machine that was built and sold around this time, it would have that feature, wouldn't it?

A Yes.

Q Not everyone has this latest 2300 vinyl-covered job, do they?

A Not all, no.

Q Continuing: "Don't try to 'run' it on by starting the machine while the brushes are on the floor, and then lowering the machine on top of the brushes."

A Who wrote that? Shouldn't say "on." Don't try to run by starting the machine.

Q Don't try to run it; but except for the grammar, that is a valid instruction?

A Yes.

Q Continuing, next paragraph: "The height of the handle is adjustable," is that true?

A True.

Q "Set it at a comfortable level (usually just about waist high)."

A True.

Q "Hold both handles firmly and start the motor by squeezing the switch on either handle."

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A True.

Q And in parenthesis ("The motor stops automatically when switches are released").

A Yes.

Q Continuing: "With the motor running, you control movement of the machine to the right or the left by raising or lowering the handle."

A Yes.

Q "When the handle is at a certain," perhaps level should be inserted, "lift the handle higher, if machine will move to the right as you move left." Can you translate that for us?

A I wish I could. "When the handle is at a certain, lift the handle higher.

MR. BERKE: Objection, your Honor, he is being asked to translate something he didn't write.

A I don't know what that means.

Q In any event if you want to move this machine to the left, you tilt it from the right?

A You raise and lower the handle.

Q You raise and lower the handle? Do you ever use a tilt in connection with the operation of it?

A Only if you were stripping and using it to remove a black mark, as I showed you in the corridor -- "heeling" is

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the term.

Q "Heeling" is the term?

A Yes.

MS. RODENHAUSEN: May I have the witness' last two answers read back. I can't hear him with Mr. Stitt in front.

THE COURT: Surely.

(Record read.)

Q Continuing: "You move the machine forward by pushing on the handle," is that right? Stopping right there?

A Yes.

Q "And backward by pulling while the machine is running," is that right?

A Yes.

Q "You will find it much easier to pull the machine than to push it."

A Yes.

Q "Keep the cord slung over your left shoulder and hold loosely on the handle of the machine with your left hand." Is that good advice?

A Yes.

Q I believe you showed that out in the hall, didn't you, that while your cord was strung along the wall, that a man in actual operation would want to have it over his

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shoulder?

A Yes.

Q "Don't let the cord get under your feet or under the machine. This could cause you to get hurt and/or cause damage to the machine."

A Yes.

Q "Don't bump furniture or baseboards."

A Yes.

Q "Operating a floor machine expertly takes skill and practice."

MS. RODENHAUSEN: Objection, your Honor, to that question. There is a question before the witness with reference to that sentence. It's a qualitative sentence within that report which calls for a conclusion on a word here that is part of a definition of equal work which is skill, and I don't think this witness is competent to answer the question relating to this skill in the operation of the machine.

THE COURT: Why don't you ask on redirect what he means by the use of that term in terms of actual operation.

MS. RODENHAUSEN: Well, your Honor, the use of the term is in the statement which is being used by Mr. Stitt in asking his question. How can a witness know what is meant by that phrase? It's a Columbia University

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document.

MS. LIBOW: We join in the objection, your Honor.

MR. STITT: Your Honor, I think the witness is competent to understand this question.

THE COURT: I will permit the witness the question to be asked, and you may on redirect ask what he understands that word to mean and what he meant by it when he endorsed it, if he did.

Mr. Gubb, you are being asked here, as I understand it, to say whether or not these are appropriate instructions to be given a trainee in the use of this machine. That is really what it amounts to, since you don't have a manual, apparently, Mr. Stitt is asking you whether the manual that Columbia gives is an appropriate manual. To the extent that you deem it an appropriate manual, so be it. If you do not deem it appropriate, if you disagree with any of the language, you may comment accordingly.

Yes, Mr. Berke.

MR. BERKE: But that final line, your Honor, which Mr. Stitt just read to him, is not a manual. It's not a line of instruction. It is merely a conclusory line, so in that sense, I think Mr. Gubb should be instructed.

THE COURT: Mr. Gubb has been put on notice on all the problems in that language and if he wants to comment

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on it, he is certainly at liberty to do so.

MR. STITT: He certainly has been given notice.

Q I will read to you again, Mr. Gubb.

MR. BERKE: Can we have the last question again?

Q "Operating a floor machine expertly takes skill and practice."

A I would like to definitely take out the term "skill" and say "practice," yes.

THE COURT: What was the answer?

A I would like to drop the word "skill," but "practice," yes.

THE COURT: All right.

Q Now, it mentioned in the Columbia document that I just showed you for identification, and I believe in your direct testimony, that the motor stops automatically when the switch is released?

A Yes.

Q Suppose a person loses control of this machine and doesn't have the presence of mind to let it go. What happens?

A It would, as I mentioned -- it would swing to the left until it came up against something, and then it would -- wouldn't go any further; would just stay there.

Q The machine would come up against something or

someone?

A Then it would just stay there against the wall, or it would just stay there.

Q It could hit a piece of furniture, for example --

A It could.

Q -- or a bystander, if a person was standing where that piece of furniture was?

A They usually aren't standing there when they are.

Q But if a person just happened to be there?

A Sure, sure.

THE COURT: Mr. Gubb, you deleted the word "skill." Do you regard this as a machine that requires sensitive handling?

THE WITNESS: No, I don't, your Honor. I don't think I am skilled in running a floor machine. I think I am just practiced.

THE COURT: But it requires sensitive handling? In other words, excessive movement of the hands?

THE WITNESS: No, very, very minimal.

THE COURT: So it's a very minimal thing, and, as a matter of fact, you commented that you almost had to think up and down rather than say do it up and down --

THE WITNESS: Yes, yes.

THE COURT:--which is the sensitivity that you are

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describing here.

THE WITNESS: Yes.

THE COURT: Am I right?

THE WITNESS: Yes, because everyone can think but not everyone can move their hands up and down.

Q It requires a concentration?

A No, it comes second nature.

Q That is when you are experienced at it?

A Practiced, yes.

Q That comes with experience?

A Yes.

A Stripping is when you take a finish that is on a tile floor, or a wax, and remove it completely.

Scrubbing is not completely removing all of the wax. Let's say it's kind of surface cleaning.

Stripping -- going right down to the bare tile.

Q But you would use the same attachment to do the job or would it be a different one?

A A different one.

Q A different attachment?

THE COURT: Mr. Stitt, are you going to be some minutes longer?

MR. STITT: Yes, sir, I am.

THE COURT: We'll take a ten-minute recess.

(Recess.)

Q Mr. Gubb, before the recess I was asking about the variety of uses that the floor machine of Clarke and others is put to, and I think we covered stripping and scrubbing. Is it also used for waxing?

A No.

Q Or for buffing?

A Yes.

Q And that requires a special attachment?

A That brush.

Q For polishing?

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A Yes.

Q What sort of an attachment does that require?

A Same brush. Polishing and buffing are the same.

Q Can it also be used for carpet shampooing?

A Yes.

Q Do you have to have any additional items besides those that are in the courtroom today?

A Yes.

Q What are they?

A A nylon brush.

Q Do you have a tank attachment?

A You can use a tank attachment.

MR. STITT: Could you mark these two documents for identification separately and in the order that I have given them? Thank you.

(Defendant University's Exhibit P marked for identification.)

xxx

(Defendant University's Exhibit Q marked for identification.)

xxx

Q I want to go forward with you on the techniques with regard to stripping and buffing, Mr. Gubb; and I will use before you as I did earlier, portions of the Columbia manual, your Honor, to which I have referred earlier. I use that term because it's the first one that comes to mind,

mblm-224 Gubb-cross

and these are respectively: Exhibit P for identification, which is labeled Methods XII, dated January 1, 1965, entitled Stripping Floors, two pages; and the other is O for identification, which is entitled Methods VIII, January 1, 1965.

* * * * *

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Q I show you Exhibit P and I am going to draw your attention to paragraph 6, under the heading Procedure:

"Scrub the area with the floor machine, using a green 3-M pad."

Are you familiar with that type of pad?

A Yes.

Q What sort of pad is that?

A This is a nylon pad manufactured by 3-M Company.

Q Does Clarke also have those pads?

A We have them, yes.

Q And they are for sale, are they?

A Yes.

Q Continuing: "Go around outer edge first. Begin in far left corner and scrub from left to right until entire area has been covered. Floors should be scrubbed across and

then up and down in order to avoid streaking."

Is that good technique?

A Maybe in 1965; yes.

Q When this was done?

A It's antiquated, yes.

Q But at the time, this would have been recognized technique?

A Yes.

Q Continuing with Exhibit Q, entitled Floor Buffing, and the date also is January 1, 1965. I draw your attention to paragraph 3 under Procedure:

"Put the soft buffing pad on the floor machine. Begin at the far left corner and work backwards with your feet about 18 inches apart."

Is this recognized technique?

MS. GOODMAN: Objection, your Honor. There are two sentences in there. I think we should have specificity as to which sentence we are referring to? Two different techniques.

MR. STITT: I will start over again.

Q First sentence, Mr. Gubb: "Put the soft buffing pad on the floor machine." Standard?

A Yes, 'sir.'

Q Continuing: "Begin at the far left corner, and

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work backwards with your feet about 18 inches apart." Standard?

A I would disagree with it but if that's what they recommend, fine.

Q This could be a valid technique?

A I would work forward.

Q You would work forward but it could be done backward?

A Sure.

Q "Buff from side to side. Raise the handle for the machine to go to the right; lower the handle for the machine to go to the left." Is that standard?

A Avoid bumping the machine against the baseboard.

MS. GOODMAN: Your Honor --

MR. BERKE: Objection, there was no answer to that.

THE COURT: He said, "Uh-huh."

A Yes.

Q Last sentence: "Avoid bumping the machine against the baseboards or the furniture."

A Yes.

Q Is there a different technique entirely with regard to shampooing carpeting?

A Not a different technique, but a different procedure.

Q Different equipment?

A Different pads. You are using a nylon brush.

Q You'd also use the solution tank which would be annexed?

A If you wanted to use that method, yes.

Q And that method is used within the industry?

A Yes.

Q Do you recommend a machine larger than 17 inches for shampooing rugs?

A Never.

Q Why is that?

A Because of the horsepower of the motor, the weight of the machine, and the torque or friction or drag created on the carpet, compared to a resilient tile floor.

Q What would happen if you used that 23-incher on a rug?

A The motor would not turn at the 175 -- the brush would not turn at the 175 r.p.m. Therefore, the motor would not turn at 1750 r.p.m. and the motor wouldn't cool and it would burn up the motor. Actually, it would probably blow the circuit first is what would happen.

Q One of the two; it would blow the circuit or --

A Continued use -- it would burn out the motor. Usually the circuit goes.

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Q How much would it cost to repair that motor if it happened?

A If it was burned out?

Q Yes.

A A hundred, I guess.

Q Continuing with this cost feature, how much are you offering that 23-inch machine for over there to my right?

A Exactly? I would have to look at my brief case. I am going to say $700. I don't know the exact price.

Q Suppose I wanted that brush attachment. Would that be extra?

A No, that comes with the machine.

Q Are there some attachments which don't come with the machine?

A Yes.

Q What are they? Describe them for us and give us the cost.

A Exact cost?

Q Your best estimate, Mr. Gubb, will be fine.

A Can I use my brief case, because -- don't tell our president, but I don't remember the prices for this size machine here, Mr. Stitt?

Q Sure.

A $54 for that polishing brush, $54 for a scrubbing

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brush. A steel wire brush would be $67.25. A lamb's wool polishing pad would be $26.60, and a drive pad assembly would be $68.90.

Q What about a sanding disk?

A Not available in the 23-inch -- our 23-inch machine.

Q Is it available on one of your other models?

A On the 20-inch, yes; and 17, yes. That is $71.25.

Q Suppose I wanted to go whole hog and have that shampooing attachment?

A The tank assembly?

Q Yes.

A That's $87.

MS. RODENHAUSEN: Would the reporter please read that back -- seven dollars?

THE WITNESS: $87.

Q So the total package would be somewhere around a thousand dollars?

MR. BERKE: Objection, your Honor. I think the evidence is in. Just add them up.

THE COURT: All right, sustained.

MR. STITT: I simply draw attention, your Honor, to Defendant's Exhibit 127 which shows the cost of an upright Hoover vacuum at $44.95.

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Q Are you familiar with a Bissell carpet sweeper that weighs about seven pounds?

A You mean the manual?

Q The manual carpet sweeper?

A Non-electric?

Q Non-electric.

A Yes.

Q How much does that cost?

A How much does it sell for?

Q Yes, how much does it sell for.

A $25. I don't know.

* * * * *

Q I am going to return, Mr. Gubb, to page 2 of University Exhibit O for identification. This is labeled Equipment VI, your Honor, February 5, 1965, floor machines, and this is entitled "Care."

We'll just proceed as we did before.

"When you finish with a machine, wipe it off with a damp rag." Standard?

A Yes.

Q "As you coil the cord on the handle, wipe it off, too"?

A Yes.

Q "Always return the machine to its proper location with full brushes and attachments"?

A Right.

MR. BERKE: Objection. That is some sort of instruction about where to keep the machine in the university. How would this witness know about that?

Q That is a standard instruction, isn't it, Mr. Gubb?

MR. BERKE: They may store it right there on the floor where it's used. It's meaningless.

THE COURT: Overruled.

Q "Never leave brushes or attachments under the machine. Never stack them one on top of the other."

A True.

Q What is the purpose of that?

A With the brush -- the bristles could bend; and then they wouldn't do -- they are designed to work on the ends. If they got bent, they would work on the sides and

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they wouldn't do as good a polishing.

Q They wouldn't last as long and they'd have to be replaced?

A They can be easily brought back by putting them in water. They make them last longer.

Q This procedure would be recommended to preserve their life and vitality?

A Yes.

Q Continuing: "Hang the attachments on wall brackets."

A That's customary procedure.

Q Why is that, Mr. Gubb?

A So they don't get bent out of shape, or get stepped on or lost.

Q "If you store them on a shelf, place them upside down with nothing on top or stand them on edge."

A They should never stand on edge.

Q For the same reasons you gave before?

A Yes.

Q "If you notice anything wrong with the machine cord or brushes, report it to your supervisor immediately."

A Sure.

Q "When you stop the floor machine, raise it so that the brush will not touch the floor."

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A I don't know why.

Q Continuing: "Do this even if only momentary." You don't know why that is, either?

A Not yet.

Q Continuing: "It will prevent a ring from being formed on the floor."

A The only thing they could be talking about there is if they -- well, if they have been scrubbing, they would have taken all the wax off. You leave a ring on the floor by the machine resting on the detergent; but in this case, I don't know why that is in there. Doesn't make any --

Q So you don't know the reasons, if any, for those last couple of sentences I read to you?

A No, I wouldn't put them in.

MR. STITT: Mark this for identification, please.

(Defendant University's Exhibit R marked for identification.)

xxx

Q I am going to direct your attention to University Exhibit R for identification, and place some questions before you. We will just go through them one by one, in order, and the record should show that I have placed one copy, Xerox copy of these photos before my adversaries, which I hope they will all share; and one in front of the court.

I show you the first --

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MS. LIBOW: Could we each be provided with a set of these? Why should we all have to share them? We're two separate plaintiffs.

THE COURT: For now, why don't you look over each other's shoulders.

Q Are you familiar with the type of object shown in the first photograph?

A Yes.

Q What is that?

A Mopping tank.

Q Would you give me the approximate size and the measurements depicted?

A Is it 40 inches long and -- what is that, 32 inches wide?

MR. BERKE: Your Honor, I will object strenuously to this as being beyond the scope of direct examination. This man was testifying on machines. He is now identifying pictures he didn't take, can't authenticate. He is really just reading a document into evidence.

THE COURT: Mr. Stitt, why do we get into the mopping tank with this gentleman?

MR. STITT: All right, your Honor, let's just go ahead a little bit.

THE COURT: Sustained.

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Q Let me show you five photographs down approximately, in this booklet a machine that I know you have seen before, Mr. Gubb. What is it?

MS. RODENHAUSEN: Tell us what page it is.

THE COURT: This is the machine that says Advance.

MR. STITT: It is the sixth photograph. It is the seventh and also the eighth photographs.

Q Are you familiar with that machine?

A Very much so. It's like an old girl friend.

Q What do you call that "old girl friend"?

A That is a 14-inch dry foam --

MS. GOODMAN: Objection to that term, your Honor.

MR. STITT: The witness used it.

THE COURT: I will permit it to stand.

A It's a 14-inch, dry foam, carpet shampoo machine.

Q How much does that sell for?

A I honestly couldn't tell you now. I would say $500.

Q That would be your best estimate -- about $500?

A Maybe today it's seven. I really don't know.

Q The last time you handled them in sales was when?

A In 1972.

Q Would you say the price of machinery has gone up about 40 percent in the last two years?

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A Twenty-five.

Q About 25?

A Yes.

Q But, in any event, $500?

MR. BERKE: Your Honor, I will object to this on the same ground. There's been no connection. I assume the court is accepting it subject to connection of some kind. We don't know that these machines are in fact in use at Columbia or how many people use them or for how long or who uses them.

THE COURT: I will take it subject to connection.

MS. LIBOW: We could state the same objection, your Honor.

THE COURT: All right, very good. Go ahead.

Q How much does this machine weigh, Mr. Gubb?

A I could only give you a guesstimate.

Q Give me your guesstimate.

A Seventy-five pounds.

Q Could it weigh as much as 88 pounds?

A Very possible.

Q Turning to the second shot of it: Is this the rear side of the same machine?

A It looks like it; not necessarily, but could be, yes.

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Q I see this statement: "Fill" -- Can you read that for us? "Do not fill above three-and-a-half gallons"?

A It's three-and-a-half or three-quarters -- three-and-a-half gallons.

Q What do you put in there?

A Water and carpet shampoo.

Q How much would this machine weigh with three-and-a-half gallons of solution in it?

A My Imperial gallon weighs ten pounds per gallon of water, so three-and-a-half times ten.

Q That would add another 35 pounds to the weight?

A Yes.

Q Next I want to show you what's called a -- labeled [illegible] pile lifter. Have you ever seen those before?

A Yes.

Q Would you describe that machine for us -- the specifications?

A That is like an upright vacuum -- beater brush which beats the carpet for vacuuming carpet, and vacuums the dust into this bag.

Q Why do they call it a "pile lifter"?

A Because of the aggressiveness of the brush. It's a very aggressive one on the carpet.

Q When you say a brush is "aggressive," can you

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expand on that for us?

* * * * * [1478]

A That term "aggressive brush in carpet vacuuming," is the speed at which the brush turns on a machine, a pile

[1479]

mblm-241 Cubb-cross

lifter. It turns at a very high r.p.m. I do not know the r.p m. on those.

Q Does Clarke have a similar pile lifter?

A No.

Q Advance?

A No.

Q Who does have one similar to Hild?

A I think Certified.

* * * * *

Q Next object, Mr. Gubb. Have you ever seen a machine before of that type?

A Noble Flor-O-Vac, yes.

Q What sort of a machine is that. What does it do?

A It's a vacuum.

Q What kind of a vacuum?

A I don't understand what you mean: What kind of a vacuum. Vacuum floors?

Q How does it differ from a household, upright-type vacuum?

A It doesn't have a beater. It strictly works on a vacuum principle of moving the air. There is no beater involved, no brush.

Q How much does this contraption weigh? Do you know? I show you two photos.

A I couldn't tell you.

Q Does it weigh about 60 pounds?

A I have no idea.

Q I show you a photo of three upright Hoover, Eureka, and Hoover vacuum cleaners.

A Right.

Q Are you familiar with those machines?

A Yes.

Q How much do they weigh from left to right and how much do they cost?

MR. GOODMAN: May the record indicate that the witness is looking through a portfolio to answer the questions, and does not know of his own recollection.

A The one in the center -- the Eureka is 18 pounds. The Hoover I don't know; and I don't know what make that is.

Q The one on the right you can't tell?

A No.

Q How much do these upright vacuums go for?

A The Eureka -- about $59.

THE COURT: Mr. Gubb, you were asked -- there is an objection made before me as to the weight of Eureka. You have looked at a catalog. Does that accord with your own personal knowledge?

THE WITNESS: Our same machine is manufactured by Eureka, your Honor.

THE COURT: I see. Very good.

The answer may stand.

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Q Now, I am going to come to a photo, too, in order that I am sure you can recognize and ask you what is depicted in these photos in this exhibit for identification?

A They are two Clarke Floor Machines.

Q Can you tell us the diameter of each, of your knowledge, and also by looking at the ruler that is also depicted in that photograph?

A The first one looks like a 15 inch.

Q Might that be 17 inch?

MR. BERKE: Objection. He is leading, your Honor.

A I don't think so, no. See it way over here?

Q I see. All right.

Might I suggest that each division of those rulers are six inches?

A Are they?

Q Yes.

MR. BERKE: Objection, your Honor.

MR. STITT: It's cross-examination, your Honor. I'd say 20 inch.

THE COURT: Any question about that?

A It looks like a 20 inch.

MR. BERKE: The suggested sizes of something, I don't even know.

Q There is no doubt those are Clarke models?

A Right.

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Q Are they of somewhat earlier vintage than this 2300 that I now am squeezing here?

A Yes.

Q In what way are they different? What differences do you notice, Mr. Gubb?

A The vinyl bumper is, as I mentioned earlier, is around the edge of the machine, here, rather than completely encasing it.

Q I see. So it's possible for some steel on these machines too?

A Not likely, but possible.

Q But possible.

I draw your attention to the handles of each of these machines. Do they differ from the 2300 that you brought in today?

A Yes.

Q How do they differ?

A They likely have a single switch on the side, rather than a double switch.

Q Does the upper handle go out as far on the photographed machines as it does on the one in this courtroom?

A Well that's a different size machine.

Q I am going to draw your attention to this statement in Labor Department Exhibit 118 for identification,

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concerning the improved handle, and the purpose of that was to assure greater leverage in the use of the machine?

A No.

Q Don't you see that phrase "assure greater leverage"?

A Oh, for them? Okay. Yes.

Q For the operator?

A That's what it says in there.

Q It says in Clarke's own publication?

A Yes.

Q You stand by that, don't you?

A Yes.

Q So you don't see that extended handle in these Columbia machines in this photograph?

A Not the same handles, no.

Q They are not as wide?

A Right, that would be for heeling -- taking out the black marks.

Q Let me show you this next photograph -- three photographs of the same piece of equipment. Are you familiar with that machine which appears to be an Atlas make?

A Atlas. It's a wet-pickup vacuum.

Q Is that referred to sometimes as a wet-dry vacuum?

A Yes.

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Q Does Clarke have a machine like that?

A Yes.

Q How much does that type of machine go for on the present market?

MS. RODENHAUSEN: Objection to the form of that question, your Honor.

THE COURT: Overruled.

A Five hundred dollars.

Q How do you operate that machine? Can you tell us?

A Plug it in to an electrical outlet, flip the switch and just push it.

Q Just push it?

A Yes.

Q How much does this machine weigh? You may refer to your own specification to refresh your recollection.

A Approximately 50 pounds.

Q Could it go as high as 90 pounds?

MR. BERKE: Objection, your Honor. The witness testified as to one weight from his memory. Now, he is being asked as to another specific weight and he is really researching in a book to see if the book lists another specific weight.

MR. STITT: I am pressing him on cross, your Honor.

THE COURT: Overruled.

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MR. STITT: Would you read the question back to the witness, Mr. Reporter?

(Question read.)

A Theirs might. Ours goes up to 68 pounds.

Q Do you use any solution in connection with the operation of this machine or does it just suck up moisture?

A It sucks up the water that you would use for scrubbing if you were using it for a wet operation.

Q Let me show you these two photographs, several entitled Waste-mobile.

MS. GOODMAN: Objection, your Honor. That is of the power-driven, mechanical objects that I thought we had eliminated his testimony to.

THE COURT: Mr. Stitt, aren't we getting a little bit afield with this gentleman?

MR. STITT: I think we might, your Honor.

THE COURT: All right. Sustained.

MR. STITT: I think I can show that from a different source.

Q Just one last item, Mr. Gubb, and I will let you go. And that is: Is operator fatigue a factor in the operation of a floor machine such as the machines shown you in the photographs or the ones that you brought in today?

A Are you asking my opinion?

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Q Yes.

A Like in any other job where they work eight hours: yes, they do get more tired at the end of the day.

Q Is that factor of operator fatigue one factor that manufacturers such as Clarke and American Cleaning consider, in improving their machines in recent years?

A I don't really know if I can answer that by saying yes or no.

Q Let me show you this Minuteman brochure; and I just draw your attention to this, and shows something like the Clarke Machine basically?

A Similar.

Q And this statement: "Less operator fatigue result of precision balance and perfectly coordinated speeds and weights."

MS. GOODMAN: Objection, your Honor.

Q Does that refresh your recollection at all, Mr. Gubb?

A Does that what?

Q Refresh your recollection further on this factor of operator fatigue?

A For Minuteman. I don't know if we say that in ours. I don't know.

THE COURT: Mr. Gubb, what counsellor is asking

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you is: Whether or not there is a factor of operator fatigue in running machines of this size that is unique to these machines. In other words, is there a fatigue factor in the running of this machine that is different from the running of a Bissell carpet sweeper?

MS. LIBOW: Your Honor, I would object to that restatement of the question as though Mr. Stitt's question were that.

MR. STITT: I will adopt that question as my own.

THE COURT: It isn't Mr. Stitt's. It's my question and I am trying to focus the gentleman's attention here on would --

THE WITNESS: Would there be more fatigue if you were running this floor machine or if you were pushing a Bissell?

THE COURT: Right.

THE WITNESS: Absolutely.

* * * * *

REDIRECT EXAMINATION [1490]

BY MS. RODENHAUSEN:

* * * * *

Q Have you used this model of Advance machine, [1491] Mr. Gubb?

A Yes.

Q What must an operator know to operate this particular

machine?

A You want me to go through all of it?

Q Would you please?

A Well, they have to put the solution of water and shampoo in the tank at the proper percentage. They have to lower the brush handle in the operating position, plug the machine into the wall, and then adjust the brush to the proper height on shampooing the carpet, not too low and not too high.

Q Does the operator plug in the machine?

A Yes.

Q What else does the operator have to know to run this machine?

A Then they have to twist the handle forward to propel the machine. The machine is self-propelled.

Q How does the operator control the machine?

A He steers it from behind. It propels itself in a straight line.

THE COURT: If you twist the handles, it makes it go forward. If you twist the left one, it turns one way; and the right one, it turns the other way?

THE WITNESS: No, your Honor, the brush on the carpet propels the machine. The handles just twist forward to engage the motor. The brush just pulls it along.

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THE COURT: If you want to turn it, you have to manually turn it?

THE WITNESS: Manually, on its rear wheels, like this.

THE COURT: I see. Very good.

Q How does one stop that machine?

A Release the handles.

Q When the machine is not engaged, how would one move it?

A You tip the back on the large transport wheels.

Q And push it along?

A Yes.

* * * * *

[1494]

Q Mr. Gubb, have you trained individuals to operate this machine?

A Yes.

Q In your experience, how long do you have to assist the operator and guide that person through your instructions before that person can operate that machine and control that machine without your assistance?

MR. STITT: I object to the form of that question also, your Honor.

THE COURT: I will sustain it.

BY THE COURT:

Q Mr. Gubb, what training work have you done with people concerning this Advance machine?

A A great deal, your Honor.

Q Is this in connection with -- are these maintenance people in buildings?

A Yes.

[1495]

mblm-257 Gubb-redirect

BY THE COURT:

Q When have you done this?

A From 1965 through now.

Q All right, and when you have such a training program, what do you do with it?

A What do we do with it?

Q Yes. What do you do in connection with training somebody to use this machine?

A We take the machine, going back to when -- let's go back to 1970 -- this particular machine. We put the water and shampoo in the tank and plug the machine in and show them how to lower the handle and how to adjust the brush, twist the grips, make the machine go forward; and then give it to them and let them do it.

Q How long is it before you feel that a person is competent to run this machine without supervision?

A With that machine? Immediately. I mean it's just foam. There is nothing -- no damage they can do to the carpet.

* * * * *

Q Mr. Gubb, you have before you the picture of the Hild machine; is that correct?

A Pile lifter.

Q Would you describe this machine to us?

A What it does?

Q Have you ever had occasion to operate it?

A Yes.

Q Would you describe how this machine operates?

A After you have the machine in the ready position with the handle down, etcetera, the brush then beats the

carpet; and the motor, which is mounted on top, creates a vacuum which pulls the loosened soil into the bag, which you see on the handle of the machine.

Q How does the operator start this machine?

A By squeezing the switch lever on the handle. I believe this machine is self-propelled by the brush. I am not sure of that model.

Q Do you know if this model has more than one speed?

A It has only one speed.

Q Does the operator have to adjust this model to his height or her height?

A Yes, the handle, for a comfortable position.

Q How does the operator control the movement of the machine?

A The machine actually sets its own speed based on how low the brush has been lowered into the carpet. In other words, if it's just flicking, the carpet is going to go slow. The more aggressiveness it has on the carpet, the faster it will go.

Q How does the operator guide the machine?

A Strictly by steering it.

Q How does the operator move the machine when it is not plugged on?

A On the rear transport wheels, tipping the machine

back.

Q Are you familiar with the maintenance of this machine?

A Basically, cleaning the filter bag -- emptying the bag. That's all. The motors are sealed, bearings, etcetera.

Q Do you know what kind of plug this model machine has?

A It should have a three-prong plug.

Q Is that from -- has that been your experience that this machine tends to have a three-pronged plug?

A Yes, yes.

Q How do you stop this machine, to your knowledge?

A Release the switch lever.

Q Have you trained persons in the use of this machine?

A No.

Q I refer you further along in Defendants' Exhibit R, to the next page, the machine labeled Flor-O-Vac. Are you familiar with the operation of this machine?

A Yes.

Q In what way have you become familiar with the operation of this machine?

A Just by having seen it in use, knowing the principle

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on which it works.

I, personally, have never pushed that model, I don't believe. I don't recall ever pushing it.

Q Have you discussed the operation of this machine with others who have operated it?

A I really can't recall whether I have or not.

Q Have you discussed the operation of this machine with persons who sell it?

A Oh, yes.

Q What is this machine? Will you describe it for us?

A This is a vacuum cleaner which uses strictly a vacuum motor to move air and vacuum up dust, soil, etcetera, from floors. It does not have a beater brush.

MR. STITT: Your Honor, may the record show: this is the Noble Flor-O-Vac shown on that exhibit.

MS. RODENHAUSEN: Thank you.

Q Would you describe for us how this machine would be put into operation and use?

A Plug in the electric cord and flip the toggle switch on the handle and push it with one hand.

Q Why do you say "with one hand"?

A Because it's a one-handed grip on the machine.

Q What would the user do, in your experience, with

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his other hand?

A Hold on to the cord.

Q Do you know what kind of plug this machine has?

THE COURT: Appears to have a three-prong.

A Three-way.

MR. STITT: It does appear. I have a Xerox, your Honor, and it's not as clear.

Q How do you start this machine?

A Turn the switch.

Q And how do you stop the machine?

A Turn the switch off.

Q Does this machine have to be adjusted to the user's height?

A No.

Q How would the operator control the movement of it?

A By pushing it.

Q It's not self-propelled in any way?

A Not self-propelled, no.

Q Do you know what kind of maintenance is required for continued operation of this machine?

A Empty the bag which is inside and, well, you would want to look for obstruction in the pipes that you see on the front end of it, in case there were pieces of paper, paper clips that could be caught in there.

Q How would the user empty the bag?

A You can see there is a hinge on the right-hand side; that little front swings open.

Q Would the user have to carry this piece of equipment to operate it?

A To operate it?

Q Right.

A No.

Q Is there any part of it you'd have to lift, to either change the bag or clean out the vacuum attachment?

A No.

Q I direct your attention further along in Defendants' Exhibit R, to the picture of an Atlas machine. Do you have that before you?

A The vacuum cleaner? This one?

Q Could you tell us what that machine is?

A That is a wet-and-dry-pickup vacuum.

Q Have you ever operated an Atlas wet-and-dry?

A Not necessarily that same model, but machines of that same type, yes.

Q Are you familiar with their operation?

A Yes.

Q What is the source of your familiarity?

A Back into this type work on the same principle

where the motor creates a vacuum, and there is an electric switch.

Q Have you demonstrated the use of an Atlas wet-dry vacuum?

A I don't really believe I have actually demonstrated one of their machines, no.

Q But you have used a similar model?

A Yes.

Q How does one operate this machine?

A Again, you plug in the electric cord and flip the toggle switch by using--in this case, the picture the way it's set up here -- by using this wand and hose. That will vacuum up water that is on the floor when you are scrubbing.

Q What else does the user need to know to run this machine?

A That's basically all, to operate the machine.

Q Is there any adjustment the user must make while the machine is running?

A No.

Q Is the machine self-propelled in any way?

A No; no.

Q How does one move the machine.

A It's on three -- two large wheels and a caster on

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the front of the machine -- three wheels.

Q Would the operator drag it or push it?

A Pulls it. When they are working with it they pull it, actually pulling it by the hose that you see there.

Q In what way does the operator maintain this machine?

A He would dump the solution or water out of the tank when he is finished; to make it last longer, he should flush it.

Q What is involved with flushing it?

A Dumping a bucket of water into it, or with a hose flush it out.

Q Does this machine also have the three-pronged plug?

A It should have. It looks like it does, from the picture.

Q This machine have different attachments?

A I beg your pardon?

Q Does this machine have different attachments?

A It has different attachments available, and it has one on there which is a squeegee assembly which is mounted right on the front of the machine. It's underneath the motor there.

Q What other kinds of attachments would be adaptable to this machine?

A Carpet tools and overhead pipe tools, upholstery

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tools; many, many tools could be used.

Q What would the operator need to know to change the attachments?

A If you can see where the hose in that pipe, the wand connected, just pull them apart and stick in the other tool that they wanted to use.

Q How would the operator move the machine with the long hose and the attachment on it?

A They don't when they are transporting it. They remove the hose and the wand and carry them separately and then just push the vacuum.

Q Mr. Gubb, I direct your attention back again to the floor machine 2300. I believe you have the exhibit before you -- Plaintiff 118.

I direct your attention to the inside cover again, specifically to the switch levers and the control on the handle. To your knowledge, can you tell us what the purpose was, if you know, of changing the size and extension of the control levers from the machine which you brought here today and the machine pictured in Defendants' Exhibit R which I will show you.

A Basically, from what I understand of it, it's done for a design change to make it more appealing to sell.

It also is more functional. On the new machine,

the switch levers themselves are recessed, whereas on the older model machine they were exposed, so there is just less danger of breakage with the new type than there was with the old type.

Q Breakage -- referring to damage to the machine or to the user?

A No, to the machine, to the switch lever.

Q Does the feature change in any way affect the safety of the operator?

A The new feature increases the safety factor because there is nothing that can get caught; whereas with the old, still it could get caught.

Q What could get caught?

A On the handle, the lever could catch on something -- cord.

Q Have you ever heard of that happening?

A Occasionally, yes.

Q What was the consequence of anything getting caught in the machine?

A They broke the switch lever.

Q Broke the switch; and what does that switch cost to repair, to your knowledge, approximately?

A Ten dollars, maybe, with labor and everything.

Q What is the longest period, Mr. Gubb, that you

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have operated that 2300?

THE COURT: Let me ask: To what is this relevant?

MS. RODENHAUSEN: There was some examination on a fatigue factor in operation of floor machines, and I want to get into that.

THE COURT: In the abstract, how long this gentleman has operated it, has really no relevance to our case at all.

Go ahead. You may answer.

A I guess I couldn't say I have run a 2300 machine. Maybe I have run a 20 inch. I don't remember whether it was a 23 or 20, a six or seven-hour period, scrubbing supermarkets, scrubbing floors.

Q But you have trained other people in the operation of a Clarke Floor Machine 2200--2300 models?

A Yes.

Q Have you observed them for various periods of time?

A Yes, but I have never stayed there eight hours.

Q What is the longest period of time that you observed?

A Maybe four -- four hours.

Q At what point in the operation of the floor machine would a fatigue factor come into play so as to --

THE COURT: No, I think you better go back to your first question.

Q Mr. Gubb, you referred to a fatigue factor here today--

A Yes.

Q --have you not?

A Yes.

Q What does that term mean to you?

A How tired the person is in operating the equipment. I don't know if I am qualified to get into fatigues.

MS. RODENHAUSEN: Would you read the last phrase there? His voice dropped.

(Answer read.)

Q Meaning fatigue factors and not army fatigue uniforms?

A Right. Well, I think you are getting into a medical thing. I mean, how tired are you after you work all day.

Q Mr. Gubb, what would happen if an operator ran over the cord of the 2300 machine or any of the Clarke Floor Machines?

A It would get twisted around in the brush. Many things could happen. It could pull the plug out of the wall if it wound around enough times. It could wrap the cord

around the brush so that it eventually would cut the cord which would then blow the circuit, and probably the fuse, and stop the machine.

Q Can the cord be separately replaced?

A Yes.

Q Can you tell us what that would cost?

A Probably $25 today. I could be wrong on that.

Q Would the operator get a shock if he was holding on to the machine while the cord was damaged?

A No, as long as he was not touching any metal parts of the machine and with the vinyl handle grips and switch, he would not. If he was holding on to the metal, possibly, but it would be very unlikely.

Q What kind of shock would he get if he were holding on to a model that would not have that feature of the vinyl coating?

A A good one.

* * * * *

[1510]

MS. RODENHAUSEN: Mr. Stitt, may I have Columbia's Exhibits training manual O, P, Q and R?

MR. STITT: Yes, if you will bear with me for just a moment.

(Pause.)

MR. STITT: I hand to counsel University Exhibits O, P and Q, all for identification.

MS. RODENHAUSEN: That's right; I have R. Thank you.

Q Mr. Gubb, I refer you to University Exhibit O for identification, the last sentence here: "Operating a floor machine expertly takes skill and practice."

Will you tell us what that sentence means to you?

A To me it means that you have to be skilled and have practice to be an expert. I believe I felt that just practice would make you an expert.

Q When you say "practice would make you an expert," what kind of practice do you mean by that?

A Continual use.

Q Can one operate the machine without being an expert within the context of your use of the word "expert"?

MR. STITT: I object to the form of that question, your Honor, particularly to meaning of "operate." Does she mean plug it in, or does she mean use it to do some of these shampooing jobs?

THE COURT: Sustained.

MR. STITT: And buffing and stripping and scrubbing.

THE COURT: Sustained.

Q Mr. Gubb, you have trained persons to run the floor machine, is that correct?

A I trained persons to run the floor machines?

Q Yes.

A Yes.

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Q And they practiced in your presence with the machine?

A Yes.

Q Have you seen them practice for more than an hour?

A Yes.

Q For more than two hours?

A Up to four hours, some occasional cases, yes.

Q Can you say at one point that the operator with practice become an expert?

MR. STITT: I object to the form of that question, particularly the use of the word "become." He presupposes that four hours does it, or up to four, I believe, and it's leading.

THE COURT: Mr. Gubb, the problem with this is that you have people of different gifts in terms of muscular coordination, do you not? Some people have.

THE WITNESS: Sure.

BY THE COURT:

Q And can you give us an average type of trainee, and I am talking now about a custodial employee. Keeping in mind such a person, after how many hours of operation of this machine do you feel he is fitted and prepared, he or she, to take that machine and operate it all by him or herself?

[1513]

mblm-275 Gubb-redirect

A After a day, your Honor?

Q What?

A After a day.

Q After a day.

A An eight-hour shift.

Q You think eight hours of working with it?

A Working with the machine.

* * * * *

REDIRECT EXAMINATION [1516]

BY MS. GOODMAN:

Q Mr. Gubb, you testified that you have trained people on the Clarke 2300 and other Clarke Floor Machines --

A Yes.

Q --in that series. Have there been both men and women in those classes?

A Yes.

Q Can you describe the people that you have trained in general in terms of their height, weight and age?

A This room would be an average mix.

Q Can you describe? In case the record does not reflect who we are?

A From six feet three to five feet.

Q A little taller than that.

A Well, from boys in schools from 15 years old to men 65 years old.

Q Have you trained any women 65 years old or older women?

A I don't know whether women were 65 or not, but older women, yes.

Q In your experience in observing their learning during your instruction, has their height or weight been relevant at all to their ability to learn?

A Not basically, no.

Q Has their age been relevant?

A Has their age been relevant -- except from being creatures of habit, I guess that people would tend possibly, when they are older, to shy away from equipment.

* * * * [1519]

RECROSS-EXAMINATION

BY MR. STITT:

Q Going back to the Atlas Carpetron 14 --

A Advance.

Q Advance, excuse me. Perhaps I should have said the "girl friend" again. I believe you testified that this wet-dry vacuum sucks up water and solution?

A No, this is a carpet shampoo machine.

Q I'm sorry. Which is the one that sucks up the water?

A This one (indicating) or this one, whichever.

Q That is the --

A Atlas Vac-Mop.

Q I asked you on direct examination the weight of that machine, Bissell, but how much solution can it recover?

A I believe that is a 12-gallon recovery tank.

Q So if we were to have the weight after it had recovered its full load, we would multiply 12 by 10, in Imperial terms, another 120 pounds?

A Right.

Q Then, I take it, that would have to be picked up and poured into a sink before it was used again?

A They dump over on the two rear wheels, dumps into a toilet or slop sink, whichever.

Q And depending on how high the sink is?

A Yes.

Q So if the sink was high, it might have to be lifted up -- pulled up?

A Yes.

Q I believe you mentioned that a period of eight hours might be sufficient to get the hang of this floor machine?

A Yes.

THE COURT: On the average?

THE WITNESS: On an average.

Q I take it there are some persons that might require more than eight hours?

A Some less.

Q Persons who are lacking in coordination or agility or mechanical aptitude might require more than eight?

A Yes.

MR. BERKE: Objection, your Honor, there has been no foundation that anyone at Columbia --

THE COURT: What?

MR. BERKE: There has been no foundation that any janitor at Columbia is tested for agility or any other skill before he enters on the job.

MR. STITT: I don't know what that has to do with my question.

THE COURT: I don't know what that has to do --

MR. BERKE: I think the question is irrelevant.

THE COURT: Overruled.

MR. STITT: Did we get the witness' answer to that question, Mr. Reporter?

(Question and answer read.)

Q And some persons might never get the hang of it, isn't that true?

A That's possible, sure.

* * * * *

[1524]

J U N E I S A B E L L, called as a witness by the plaintiff, U. S. Dept. of Labor, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. BODIAN:

Q Could you state your address for the record?

A 501 West 143rd Street.

Q Where are you presently employed, Miss Isabell?

A Where am I presently?

Q Yes.

A Columbia University.

Q In what capacity?

A Chandler Hall.

Q What is your job title?

A I am a maid.

Q When did you begin work at Columbia University?

A January 16, 1956.

Q Was that as a maid?

A Yes.

Q Which shift are you currently employed on?

A From 12:00 midnight until 8:30.

Q You're a woman, is that correct? You're a woman.

A Yes.

Q What buildings other than Chandler have you worked in throughout your career at Columbia University?

A I first worked in School of Business, which is now Dodge, and Journalism, School of Mines , which is

now Lewisohn; and School of Engineers, which is now Mathematics; and Pupin.

Q Have you worked in any other buildings, can you recall?

A Havemeyer.

Q How long have you been working in Chandler?

A Seventeen years and ten months.

Q Mrs. Isabell, have you ever used a wet-mop, and if so, when?

MR. STITT: If your Honor please, I am now going to object to testimony which from this witness' statement would go back to the year 1955.

THE COURT: Overruled.

Q Have you ever used a wet-mop?

A Yes.

Q When did you use a wet-mop?

A Last night, as a matter of fact.

Q Did you ever use a wet-mop regularly every night on your shift?

A Yes.

Q In what period of your employment was that?

A The first -- up to seven or eight years, until I went on nights; until we switched to night shift.

Q Can you remember that date, approximately?

A It's been about 12 years ago.

Q What areas did you wet-mop when you used the wet-mop?

MR. STITT: May the record show we are talking about 1955 to 1962.

THE COURT: Yes.

Q At the time we were using the wet-mop I was doing part time then; and I did fifth floor--the whole sixth floor and half of the fifth floor.

Q Did that include hallways?

A Yes.

Q Did that include stairways?

A Yes.

Q Did that include classrooms?

A No, we didn't have classrooms in this.

Q What kinds of rooms?

A Labs.

Q You stated that you used a wet-mop last night?

A Yes.

Q What was the occasion for using the wet-mop?

A Just to damp-mop coffee stains.

Q Have you used that wet-mop on other occasions within the last three years?

A Yes. If the janitor is busy at something else and

something needs to be done, I used a wet-mop.

Q Have you ever cleaned bathrooms, Mrs. Isabell?

A Yes.

Q Was that in the same period while you were on the day shift?

A Right.

Q Did you clean bathrooms every night?

A Yes.

Q I'm sorry, every day that would be. How large were those bathrooms, say, in numbers of toilets?

A I think it was two enclosed toilets and a stall on the eighth floor and on the fifth floor.

Q In cleaning those bathrooms, what was the procedure?

A Well, you had to clean the sinks and mirror, scrub the floor, clean the toilet bowls.

MR. STITT: Your Honor, may the record show a continuing line of objection to testimony prior to March, 1971.

THE COURT: Yes.

Q Are you familiar with the term "sanitize"?

A Yes.

Q Did you sanitize these bathrooms?

A Yes.

Q What is sanitizing a bathroom? How do you do that?

A They had some sort of material, you know, in a can or something, that you used to pour into the stall, and in particular into the toilet bowls.

Q You just pour it in?

A Yes.

Q What else do you do with it?

A You pour it in and you use a sort of mop, you know, little mop to clean it.

Q How small? What do you mean by "little mop"? Can you describe it?

A Hand mop.

Q Excuse me?

A You have a small, hand mop that you use to do this sort of thing. For the floor, you use a regular wet-mop.

Q I understand, but sanitizing is using what you call a "hand mop"?

A A deodorant.

Q Could you tell me the size of the mop you used in sanitizing?

A Well, they use just a little hand mop, a little short thing which you use.

MR. BERKE: Let the record show --

MR. STITT: Indicating about a foot high.

MR. BERKE: About a foot high, right.

Q A foot high?

A Yes.

Q What areas do you sanitize?

A The toilet bowls and the stall.

Q Presently, in your present employment at Chandler, which floors are you assigned to clean?

A Nine, eight and seven.

Q How many rooms are on the ninth floor, and what type of rooms are they?

A I have nine offices; and five labs, I think it is.

Q To your best recollection?

A Eleven offices and six labs.

Q How about the other floors you work on? What types of rooms are on those floors?

A Eighth floor is offices and labs. Seventh floor is offices and labs.

Q So all in all, how many labs do you clean?

A About 54 -- labs must be about at least 30, because the others are offices.

Q Do you have keys to all the labs you work in?

A Yes, we have one key; a master key that opens all of the doors.

Q Opens the doors to the labs and the offices?

A Yes.

Q In the labs, do you dust the counters?

A Not the counters, no.

Q Are you assigned to dust those counters?

A Well on the counters, there is different types of chemicals and what not and we have been told not to -- we don't have to touch that but they have desks and tables.

Q Does anyone clean the counters?

A The professors and the students usually do that.

Q Do janitors?

A No.

Q Do you dust-mop in the labs?

A Yes.

Q What kind of dirt or refuse do you mop up when you dust-mop?

A Broken bottles or beakers, paper, paper towels, cigarette butts.

MR. STITT: May we have that question and answer read, your Honor?

THE COURT: Surely.

(Question and answer read.)

Q How do you dispose of the dirt that you dust-mop up or all this list of refuse that you told us about?

A Take it up on a dust pan. Take it up with the dust pan.

Q Do you dust-mop in other rooms as well as labs?

A Yes, then the hallways and all the other rooms.

Q When you pick the dust up into the dust pan, do you have to bend over for that?

A Yes.

Q Do you shake out your dust-mop when you are finished with a room or --

A Yes.

Q How often do you shake out your dust-mop?

A After each room, you have to shake it out.

Q Do you use a vacuum cleaner?

A Yes, I do.

Q Is that the same vacuum cleaner that Mrs. Seibert uses?

A Yes.

MR. STITT: If your Honor please, I object to the form of that question. I don't believe the foundation has been laid.

THE COURT: Sustained.

Q Do you work in the same building with Mrs. Belle Seibert?

A Right.

Q Does she use a vacuum cleaner, to the best of your knowledge?

A Yes.

Q Do you use the same vacuum cleaner she uses?

A Yes.

Q Do you empty the vacuum?

A Yes.

Q Do you have occasion to wear rubber gloves when you work?

A Yes.

Q For what purposes do you wear rubber gloves?

A Washing table tops or spotting walls.

Q Have you ever seen janitors in your building at work?

A Yes.

Q Have you ever had any occasion to see a janitor using a machine which scrubs, strips, or buffs floors?

A Yes.

Q How often have you seen janitors using those machines?

A Not very often lately.

Q Did you ever know a maid named Cicely McNally who worked in your building?

A Yes.

Q When did she last work in your building?

A I think it was about six or so months ago.

Q Which floors was she assigned to work on?

A She worked half of the library, the fifth floor, and the sixth floor.

Q Did she clean all the rooms on those floors?

A Yes.

MR. STITT: Now, if your Honor please, I don't know if a proper foundation has been laid for that. I move to strike it.

THE COURT: Yes, there has been no foundation laid for that.

Q To the best of your knowledge --

(Mr. Stitt arose.)

THE COURT: Ms. Bodian, what are you trying to get out? Trying to establish what the other woman does?

MS. BODIAN: No, sir, I believe that someone else is now assigned to do that work, and I would like to get that out, and --

THE COURT: How can this woman establish what somebody else did?

Q Have you ever worked on those floors?

A Have I ever worked on them?

Q Yes.

A Yes.

Q Who is working there now?

A A man.

Q What is his name?

A St. Jean Derac.

Q Have you observed him working?

A Yes.

Q What kinds of duties does he perform?

MR. STITT: Now, if your Honor please --

THE COURT: Well, Ms. Bodian.

MR. STITT: I believe we had Mr. Derac yesterday from Mrs. Seibert.

* * * *

DIRECT EXAMINATION [1539]

BY MS. GOODMAN:

* * * *

[1541]

Q You testified that from '56 to about 1962 you wet-mopped?

A Yes.

Q Regularly. Were you ever given instruction on how to wet-mop?

A No.

Q You wet-mopped what kind of areas?

A The hallways, corridors, bathrooms, labs, stairways.

Q What kind of equipment did you use?

A A mop and a pail.

Q For wet-mopping: Were you paid at the maid's rate of pay?

A Yes.

Q Have you ever been paid at the janitor's rate of pay?

A Never.

Q Are you familiar with the term "shower maid"?

A Shower maid?

Q Yes.

A I think so.

Q When did you first hear that term?

A I think that applies to work in the dormitories, I believe. I have heard of it, but I have never been a shower maid.

Q Do you know anything about the job?

A No.

* * * *

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[1544]

Q You saw job postings prior to 1972 for the job of janitor?

A Yes.

Q And you saw postings after 1972 for that job?

A Heavy cleaner.

* * * * [1545]

Q Were there any other differences?

A Well, the descriptions of the jobs are quite spelled out, especially as far as the heavy cleaner is concerned, which wasn't spelled out that way when it was janitor.

* * * *

THE COURT: Read the question back, please.

MR. STITT: Read the question to the witness, please.

(Question read.)

MS. GOODMAN: I don't believe that is what she testified to.

THE COURT: This is cross-examination.

MR. STITT: This is cross-examination. That is what I am --

Q Is that your understanding, Mrs. Isabell?

A That there were jobs available in the dormitories,

Q When did you first hear it after you first went to work for the university in 1956?

A I don't know that I -- I never heard it in reference to my job.

Q I know, but when did you first hear it from your friends, for example, or any other source?

A I really couldn't say.

Q Well, during the 1950s?

A Probably.

Q And you knew that these were women who cleaned shower and lavatory facilities in Johnson Hall and other dormitories reserved for women?

A I knew that these jobs were available for women?

THE COURT: Read the question back, please.

MR. STITT: Read the question to the witness, please.

(Question read.)

MS. GOODMAN: I don't believe that is what she testified to.

THE COURT: This is cross-examination.

MR. STITT: This is cross-examination. That is what I am --

Q Is that your understanding, Mrs. Isabell?

A That there were jobs available in the dormitories,

you mean?

Q Not that they were available, that -- we'll go into that later, but that this term "shower maids" referred to women who cleaned lavatories and shower facilities in Johnson Hall, which I will suggest to you is a woman dormitory, and other dormitories used by women?

A I don't know that I was interested in that at all. I applied for a maid's job.

THE COURT: No, Mrs. Isabell, the question is: When you heard the term "shower maid," did you understand that that had reference to women who cleaned showers and lavatories in the women's dormitories?

THE WITNESS: I don't think I -- you know, if I heard the term at all, it had no connection with me whatsoever.

THE COURT: You didn't know what it means?

THE WITNESS: I don't think that I did really.

THE COURT: All right.

Q You knew, did you not, Mrs. Isabell, that these women were being paid at the janitor rate?

A No, I didn't.

Q Did you ever express interest in a job as a shower maid or a janitor?

A No.

Q Have you ever signed any of these postings before '72, in '72, or after '72?

A Excuse me?

Q Have you ever signed any of these posted notices for job openings at any time since you have been with the university?

A No

* * * *

[1549]

THE COURT: We will take our ten-minute recess now. In about nine minutes time, ladies and gentlemen, will you please retire to the back with the buckets and prepare to have everything weighed.

(Recess.)

MR. STITT: Your Honor, I think if we could just get one of these buckets half filled.

THE COURT: And the scale; and we will be all set, and I will join you at that time.

MR. STITT: Your Honor, I thought the way to proceed would be: I would stand on the scales and the clerk would hand me first these wringers, and by telling the difference in weight when I am holding the object and when I am not holding the object, we would have, in my judgment, a reasonably accurate weight for each item.

THE COURT: Right.

(Mr. Stitt stepped on the scale.)

MR. STITT: 212 or 213; it's hard to tell. I am now holding a wringer and I read 230 pounds, which would

make this wringer 17 pounds.

MR. BERKE: I read 229, making it 16.

MR. STITT: Next wringer. This wringer is somewhat higher. I would read about 232 with this wringer, standing directly above the scale.

MR. BERKE: Your Honor, Mr. Stitt did step off the scale once and we didn't take it again.

MR. STITT: That is true. Let's start again.

MR. BERKE: The scales sometimes reread.

MR. STITT: Well done.

All right, this time I am now up to 215, and the scale seems to be about 233.

THE COURT: That is wringer number 2.

MR. STITT: Wringer number 2 would be 18 pounds.

Now we'll measure the empty bucket.

MR. BERKE: Just stay on the scale and then have things handed to you.

MR. STITT: Yes, standing on the scale without the bucket now shows 214. With the bucket empty, it now shows --

MR. BERKE: 221 or 222.

MR. STITT: No, I would say 222 or 223, standing above the scale.

MR. BERKE: I see 222. That's all I can say.

MS. LIBOW: All right, a range of one pound is not a large argument.

MR. STITT: Now standing on the scale, this would be 214 without the bucket. With the bucket it seems to be over the meter at about 258.

MR. BERKE: I see 256, I think.

MS. LIBOW: A two-pound range.

MR. STITT: Now the dolly itself.

MS. LIBOW: Why are we weighing the dolly?

MS. GOODMAN: Why are we weighing the dolly that does not seem to get lifted?

MR. STITT: I would like a complete record, your Honor, because the dolly gets pushed.

MS. LIBOW: I don't think that anybody lifts it. It gets pushed.

MR. STITT: Exactly.

MS. GOODMAN: We object on relevancy.

THE COURT: We will take its weight.

MR. STITT: 214 without holding the dolly. 229 I read with the dolly.

MR. BERKE: Your Honor, I make one application, that you move the dolly back and forth with this on, because I have just done so and seen a significant difference in the strength and effort needed to maneuver this pail when it's

mblm-315

[1552]

on the dolly.

MR. STITT: I object to counsel testifying on the record and I would remind counsel that the two buckets are each half filled when --

THE COURT: And they have wringers on.

MR. STITT:--and with the wringers on when this is removed.

MR. BERKE: I think the court can weigh what the difference was in the weight of this bucket when he held it and in the weight of the bucket when he pushed and pulled it.

MR. STITT: I think the record clearly shows the weight of each bucket alone with nothing in it, and the weight of each bucket when half filled, which Mr. Berke was kind enough to do. It's a matter of multiplication.

MR. BERKE: That's correct and that is why I would like the court to experience the difference in weight in holding it.

THE COURT: Mr. Berke, obviously, it's much easier to pull on a dolly --

MR. BERKE: I will accept that, your Honor.

* * * *

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[1553]

JUNE ISABELL, resumed.

CROSS-EXAMINATION CONTINUED

BY MR. STITT:

Q Mrs. Isabell, I understand that you are assigned to the Chandler Building?

A Right, yes, sir.

Q Is that part of the university's chemistry department?

A Yes.

Q That also applies to Havemeyer, does it not, which connected to Chandler?

A Yes.

Q And your assignment, your regular assignment is on the seventh, eighth and ninth floors?

A That's right.

Q In that area, you are assigned to offices?

A That's right.

Q Laboratories?

A That's right.

Q And you dust-mop in the hallways?

A That's right.

Q As well as the rooms?

A Yes.

Q This is 24-inch dust-mop?

A Yes.

Q This weighs about three-and-a-half pounds with the handle?

A More than three-and-a-half pounds.

Q How many pounds would you say?

A This is a steel frame first of all that the mop fits on. It's more than three-and-a-half pounds -- five or six pounds at least.

Q You say five or six?

A Yes.

Q All right.

And you shake this mop out after each room you do?

A Yes.

Q That is the standard operating procedure, isn't it?

A Yes.

Q And you replace that mop twice a week?

A Yes.

Q Of course, it's the university that provides you with that replacement part?

A Right.

Q That does not come out of your pocket?

A Oh, no.

Q Have we described generally the areas to which you are assigned?

A That's right.

Q And your activity in the hallway is just limited to dust-mopping?

A Yes.

Q Going into your duties, in addition to the dust-mopping, do you wipe sills?

A Yes.

Q Do you use a damp rag or sponge to do that?

A Yes.

Q Do you also spot-clean the walls?

A Yes.

Q You do that wiping of the window sills and the spot-cleaning of the walls just as high as you can reach?

A Right.

Q You don't work on any ladders, do you?

A No.

Q Do you vacuum?

A Yes.

Q And you use an upright Hoover vacuum cleaner?

A Not a Hoover; Eureka.

Q A Eureka.

Let me show you a page from the University's Exhibit R for identification and I will point to a photograph about half-way through this volume, and I will ask you if you see the type of vacuum cleaner that you use, Mrs. Isabell.

A I have used this type and this type (indicating).

Q You are pointing to a Eureka machine in the middle and also a Hoover machine on the left?

A Right.

MR. STITT: Your Honor, I wonder if it might facilitate my examination of this witness if the clerk would be kind enough to mark each one of these pages in numerical order.

THE COURT: Why don't you do that on the exhibit at this point. I was going to suggest that before you showed it to the witness the last time. Then each page will have a number in the exhibit.

MR. STITT: Yes, I am sorry, I didn't --

THE COURT: We can refer to it as page so-and-so

of Exhibit R for identification.

MR. STITT: The record should show, so we will all have a guideline, that it is subdivision 12 of this exhibit which has the Eureka and the Hoover vacuum cleaner identified by the witness.

Q Do you empty waste baskets in Chandler?

A No.

Q It's the janitor who empties the waste baskets?

A Yes.

Q And that is also true in Havemeyer, isn't it? Do you know that?

A Yes.

Q Is there any other equipment that you use as a regular part of your duties? Do you have a cart?

A No.

Q Are you familiar with a contraption called a Waste-mobile? And I show you page 23 of Exhibit R for identification.

A That's in the fancy buildings. We don't have that. We never did.

Q You don't have a Waste-mobile?

A No.

Q Do you have rags and sponges?

A Yes.

Q And a plastic bag in which you empty ash trays?

A Yes.

Q How do you carry those items, Mrs. Isabell?

A In a pail.

Q In a pail?

A Yes.

Q What size pail?

A Plastic pail.

Q A plastic pail?

A Yes.

Q Can you give us the dimensions of it, roughly?

A About so high.

Q About a foot high?

A Yes.

Q How wide in diameter?

A About -- about (indicating).

Q About ten inches, perhaps?

A Ten inches.

Q Is there any other equipment that you use as part of your regular duties at Chandler?

A No, except for a brush to clean the radiators.

Q And that brush you'd carry in your little pail?

A Yes.

Q You aren't called upon to wet-mop these corridors

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as your regular duty, are you?

A I wet-mop them if it's necessary.

Q Where do you get the mop?

A Where do I get the mop?

Q That's right.

A I have the mop.

Q Is that part of your equipment, also?

A Yes.

Q What size?

A A 16-inch.

Q 16-inch?

A Yes.

Q Do you carry that around with you or is that in a utility closet somewhere?

A No, I don't. I only use it occasionally if I need to. I don't --

Q You don't mean to suggest that you wet-mop the entire corridor from one end to another, do you?

A No.

Q If you see some coffee stains somewhere in doing your job, you feel that --

A Right.

Q -- that that should be taken care of?

A Right.

Q So it's on a spot basis that you use this 16-ounce wet-mop?

A That's right.

Q Have you seen janitors do stripping or waxing or buffing in the corridors where you work?

A Not lately.

Q The question called for: Have you ever seen them do those jobs?

A Oh, yes, yes.

Q When that is called upon, when that is required to be done, whether it's off --

MR. BERKE: Objection, your Honor, on the same basis of no foundation.

THE COURT: He has not finished.

Q You aren't called upon to wax or buff those corridors, are you?

A No.

Q That is the janitor's job, isn't it?

A Right.

MS. GOODMAN: Objection, your Honor. Before he would not allow testimony as to what Mr. Derac did. I think if she has no knowledge as to what Mr. Derac did, she has no knowledge as to what any janitor does and I don't think she is competent to testify on it.

MR. STITT: If your Honor please, this woman has testified that she has been in Chandler, I believe, with perhaps a period of six months, in this building for 18 years.

MS. GOODMAN: That was precisely our point when she attempted to testify as to Mr. Derac taking over duties previously held by a maid.

THE COURT: That was a different situation. Overruled.

MS. GOODMAN: I don't understand.

Q Are there lavatories in Chandler?

A Yes.

Q Women's rooms as well as men's rooms?

A I'm sorry?

Q Women's rooms as well as men's rooms?

A Women's rooms?

Q Yes.

A Lavatories?

Q Yes. Lavatories.

A Oh, yes.

Q And these lavatories -- men's rooms and women's rooms -- have to be cleaned each night, isn't that so?

A Yes.

Q And it's the janitors who do that cleaning, is it

not?

A Now they do it, yes.

Q Well, they have been doing that regularly since March, 1971, have they not?

MR. BERKE: Objection, your Honor.

THE COURT: If she knows.

A Yes.

MR. STITT: She answered.

THE COURT: What is the objection?

MR. BERKE: The objection is on the same basis as the Derac testimony. As the court stated at the time she attempted to testify as to Mr. Derac, we don't know how often she has seen them, who she has seen, for what time she has seen them.

THE COURT: Mr. Berke, somebody was trying to establish at that point the totality of the duties involved in that particular janitor, without being there to observe the totality of the duties. Here, it's just a question of who does this specific duty in this building.

MR. BERKE: But the question is: Can she know who does it? How long it takes him? There is a totality of that duty.

THE COURT: She is not being asked that. He is just asking who did it.

Q You testified that it's the janitors in Chandler who empty the trash baskets?

A Yes.

Q What do they empty them into or put them on?

A They have a cardboard barrel on wheels they push around and empty plastic bags.

Q What happens to all of this garbage and rubbish after the janitors pick it up? Can you tell us that?

A What happens to it?

Q Yes, please.

A It all winds up in the basement in plastic bags. What happens to it from there, I don't know.

Q Isn't it true that there comes a time each night when those plastic bags of garbage have to be removed from the building?

A They are taken to the basement. What happens from there, I don't know.

Q Isn't it a fact that these plastic bags are placed in trash trucks by the janitors?

A Not in the building.

Q They place them in the trash trucks outside the building?

A Evidently, in the basement of Havemeyer.

Q Is that your testimony?

A Yes.

Q So it's taken out of Chandler to the basement of Havemeyer and that is where the trash trucks are loaded?

A Yes.

Q And the janitors do that?

A Yes.

Q What happens to the trash trucks then?

A I really can't say.

Q Isn't it a fact that the janitors, acting singly or doubly, then push those trash trucks out of Havemeyer to the street?

THE COURT: If she knows.

A I really don't know because I have never seen them.

Q In any event, you have never been called upon to push trash trucks out of Chandler or Havemeyer, have you?

A No.

Q Have you ever seen those trash trucks?

A I think so.

Q I am going to show you a few photographs of a trash truck, and these are from another building, Mrs. Isabell; I want you to know that.

MR. BERKE: Objection, your Honor. On that basis, I object --if they are from another building.

MR. STITT: Your Honor, I could be accused of misleading a witness if I had not made that disclosure.

THE COURT: Yes, yes.

MR. BERKE: I am not condemning your disclosure. I am just saying that the picture is irrelevant.

THE COURT: Overruled.

Q I show you these --

THE COURT: If it's a representative truck, it's not irrelevant.

Q I show you these trucks depicted on pages five and six of this exhibit. Have you ever seen trash trucks like that --

A No.

Q -- before?

A No.

Q How do they differ from the trash trucks that you observed in Havemeyer or Chandler?

A I haven't observed them.

Q In any event, you haven't been required to push any trucks such as those depicted at pages five and six of this exhibit?

A No.

Q Have you seen the janitors do wet-mopping in areas besides the corridors during your many years at Chandler?

A Have I seen them wet-mopping?

Q Other areas besides corridors?

I think we have established that.

A Yes.

Q Does that include the stairways?

A Yes.

Q The elevators?

A Yes.

Q The entranceways downstairs?

A Yes.

Q Isn't it true that wet-mopping is going on in Havemeyer every night?

A I don't know; I work in Chandler.

Q Excuse me, I will amend the question to Chandler; and I am sorry for that misstatement.

A Is there --

Q Isn't it true that there is wet-mopping going on in Chandler every night?

A Not necessarily every night.

Q You mean you don't observe it every night?

A It's not done every night. Last night, for instance, Gene Deraq wasn't in. He didn't come in last night.

Q He is the wet-mopper?

A Yes, for certain floors. But the regular janitor did his work last night so there was no wet-mopping done.

Q But if Mr. Derac had been there, there would have been wet-mopping going on in the building?

A On certain floors.

Q On certain floors. That is what I am getting at. Somewhere in that building each night there is wet-mopping going on as a matter of general routine?

A Yes.

MS. GOODMAN: Objection, your Honor, she has obviously not said that.

MR. STITT: Your Honor, all I can go by is the record.

THE COURT: The record is made. Go ahead.

Q Mrs. Isabell, do you see this floor machine over here?

Let the record show a Clarke 2300 model.

A Pardon?

Q Do you see this floor machine that I am handling?

A Yes.

Q Have you seen machines similar to it at Columbia used for stripping or waxing or buffing?

A Not in Chandler or Havemeyer.

Q You have never seen such a machine at the university?

A Not like that.

Q Not in your 18 years?

A Not like that.

Q Not like that.

Let me show you the two machines depicted at page 13 of University Exhibit R for identification, and I will ask you if you have seen either or both of the machines of that type at the university?

A The one on the left looks like the one that's used in Chandler or Havemeyer.

MR. STITT: Let the record show Mrs. Isabell has identified the smaller Clarke Floor Machine.

Q And it's the janitors who use those machines, isn't that right?

A Yes.

Q You haven't been trained in the use of those machines?

A No.

Q And you don't use them?

A No.

Q Did you see over here, Mrs. Isabell, this dolly with two pails?

Let the record show I am referring to the two pails and the dolly that was the subject of --

THE COURT: Indicating the two pails.

MR. STITT: Yes.

Q And these two wringers?

Have you ever seen equipment like that during your 18 years?

A Not in Chandler.

Q Not in Chandler.

In any event, you have never been required to use this kind of equipment, have you?

A I have used the wringer but our pails weren't on rollers.

Q They weren't on roller?

A No.

Q And they were smaller, weren't they?

A Yes, they were smaller.

Q And that is going back to 1955 to 1962?

A Right.

Q Let me show you a contraption -- two photos, different angles -- on pages one and two of the University's Exhibit R for identification.

Have you ever seen that kind of a machine before or --

A Not in Chandler.

Q -- or mopping truck?

A Not in Chandler.

Q In other buildings, have you?

A No.

Q In any event, since March, 1971, you haven't been called upon to use mopping equipment as part of your regular duties?

A No.

Q I am going to show you photos beginning at pages 15, 16 and 17 of Exhibit R for identification. This has been identified as an Atlas wet-dry vacuum cleaner.

Have you ever seen one of those machines?

A Yes.

Q Where have you seen them?

A In Chandler.

Q In Chandler.

And it's the janitors who use these machines, isn't that so?

A I have used them.

Q When was the last time you used one?

A Oh, it's quite a few years ago.

Q How many years ago?

A In the 50s.

Q Have you seen janitors use these in the 70s, this Atlas wet-dry vacuum?

A Only if there is a flood.

Q But in any event, when that flood comes and the Atlas wet-dry has to be used, it's the janitors who use it?

A Not necessarily, because we maids would use it too, if it was available and there was a flood and we didn't get in touch with the janitor fast enough.

Q You don't use this machine as part of your regular duties, do you?

A Oh, no, you don't have a flood every night.

Q You don't handle 55-gallon drums of cleaning solvents, do you?

A The men don't either.

MR. STITT: Move to strike that.

THE COURT: Yes, strike it out.

Q And you don't work on step ladders or platforms?

A No.

Q Mrs. Isabell, I am going to show you the third page of a document that is marked University Exhibit H for identification; and I am going to draw your attention to a line, maybe 15 lines up from the bottom. I will ask you if, in the first column, you find your name?

A Yes.

Q Without telling me what the dates are, do you find in the second column opposite your name, your correct date

of birth?

A Right.

Q Without telling me the date -- I think you could in the third column -- could you tell me whether the third column contains your correct seniority date or the date you started working at the university?

A Right.

MR. STITT: If I may have a moment, your Honor.

(Pause.)

Q Would you also be kind enough to give me your height and your weight, Mrs. Isabell?

MS. RODENHAUSEN: Objection.

MS. LIBOW: Objection.

A 5'-6", 135 pounds.

MR. STITT: Your Honor, I have no further questions.

Thank you, Mrs. Isabell.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MS. BODIAN:

Q Mrs. Isabell, you were shown this picture of your vacuum cleaner from Exhibit R, page 12.

MR. STITT: If your Honor please, I think in fairness to the witness, we might show her the actual exhibit

with the slick photo.

THE COURT: All right.

MR. STITT: If I may use that term.

MS. BODIAN: That is not page 12.

MR. STITT: Well, it will be in order rather a Xerox copy.

Q Which one do you identify as the one closest to the one you use?

A I have used both of these.

Q That is the middle one and the one to the left?

A Right.

Q The middle one is the Eureka, you testified?

A Right.

Q It is the one you use every night at Chandler?

A Yes.

Q What does this read here on the bag?

A Heavy duty.

Q Heavy duty? Thank you.

MR. STITT: That is on the Eureka bag?

Q Mrs. Isabell, how do you empty this machine?

A The bag detaches; bottom and top.

Q Do you carry it off the machine?

A Yes.

Q When it's full, do you know--can you approximate

the weight of that bag when it's full of dust?

A Several pounds. I don't usually let it get full because it doesn't work.

Q It doesn't work too well?

A No.

Q You testified that before you went on the night shift, you did wet-mop various floors?

MR. STITT: May we fix again the date, so the record will be clear?

THE COURT: This is '55 to '62 we are talking about?

MS. BODIAN: Before she went on the night shift. She testified that it was before '62.

THE COURT: Go ahead.

Q What kind of pail and wringer did you use with that job?

A A metal pail.

Q How big was that?

A About ten inches -- about a foot tall and about ten-inches wide.

Q What was the wringer like?

A Like this one here.

Q Similar to the one that is --

A Yes.

MR. STITT: This -- this heavy, Mrs. Isabell?

MS. GOODMAN: Your Honor, objection.

MS. BODIAN: This is my direct examination ~~objection~~.

MR. STITT: Your Honor, on a ten-inch pail.

THE COURT: Mr. Stitt, please, Ms. Bodian is examining.

MR. STITT: I will have it on recross.

MS. GOODMAN: Your Honor, we object to the intimidation of the witness in this way and the accusation.

MR. STITT: But I object to the leading of this witness, your Honor.

THE COURT: No, no, please put it.

MS. BODIAN: I simply asked her to describe the wringer, Mr. Stitt. That is not a leading question. Will you kindly let me get through my --

THE COURT: I overrule the objection.

Go ahead, Ms. Bodian.

Q Could you describe your wringer for me please in the best terms you can, Mrs. Isabell?

A It's very much like that one.

Q When you say "very much like it," could you be more precise?

A Well, it might not be that big.

Q All right, that is what I want to hear. In

relation to this, can you recall -- I know it was some time ago -- can you recall how it might vary in size from the wringer that you were just shown?

A Not that much different really.

Q All right.

Now, you have testified that you have seen Mr. Derac wet-mopping. Have you seen him performing any other duties?

A Pardon?

Q Have you seen him performing any other duties such as dusting furniture?

A Yes.

MR. STITT: I object to that as leading.

THE COURT: Overruled. Go ahead.

A Yes.

Q And have you seen him --

THE COURT: What else have you seen him do?

Q What else have you seen him perform?

A Pardon?

Q What other duties have you seen him perform?

A He does very much the same as I.

THE COURT: No, strike that out.

What have you seen him do?

Q Specifically, what duties have you seen him do?

A He damp-mops and he dust-mops, and he dusts furniture. That's it.

MS. BODIAN: That's all, your Honor.

THE COURT: Do you have any questions, Ms. Goodman?

RECROSS-EXAMINATION

BY MR. STITT:

Q The testimony is, Mrs. Isabell, that the wringer that you used was somewhat smaller than the one that I am now holding?

A Very little smaller, really.

Q But smaller?

A Smaller, yes, but not much.

Q I believe you said that was a ten-inch pail that you used?

A Yes.

Q That ten-inch pail weigh about one-and-three-quarter pounds empty?

A I think so.

Q How did the weight of the wringer compare to the weight of the pail -- going back to '55 and '62?

A Much different. The wringer was much heavier than the pail.

Q The wringer was heavier?

A Yes.

Q But still not as heavy as this one I am just pointing to?

MS. GOODMAN: Objection, your Honor. No foundation has been laid that she knows how heavy that is.

THE COURT: Overruled.

Q But not as heavy as the one I have just pointed out?

THE COURT: Do you mind holding that one up, Mrs. Isabell?

Q Yes, would you like to hold that up?

(Handing to witness.)

THE COURT: Going back 19 years.

A Oh, not this heavy.

Q Yes.

MR. STITT: And the exclamation "oh," I think should appear on the record for whatever it's worth.

Your Honor, I have no further questions of Mrs. Isabell.

THE COURT: Mrs. Isabell, thank you very much. You may step down.

MS. RODENHAUSEN: The Secretary calls as its next witness Mrs. Thelma Williams.

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MS. GOODMAN: Your Honor, on that last one, since the record shows that Mrs. Isabell says "Oh," just a little tardily, we would like the record to also indicate that the witness was asked to pick up that wringer leaning over a desk of about a foot-and-a-half, would you say?

THE COURT: It may show that.

T H E L M A W I L L I A M S, called as a witness by the plaintiff, U. S. Dept. of Labor, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. RODENHAUSEN:

* * * *

Q Where are you employed, Mrs. Williams?

A Fairwether, Columbia University.

Q What is your job, Mrs. Williams?

A Maid.

Q I can't hear you at all, Mrs. Williams.

A Maid.

Q When did you start working at Columbia?

A 1968.

Q What building did you first work in?

A I worked at 110 Street.

Q What kind of building was that?

A Oh, that was a -- that is a building used to be a hospital.

Q Used to be a hospital?

A Used to be a women's hospital.

Q What kind of building was it when you worked there?

A It was offices and classroms in it.

Q What were your duties in that building?

A Clean.

Q What specifically did you do, Mrs. Williams?

A I cleaned office -- I cleaned office and class-rooms.

Q Any other kind of areas and rooms?

A No, just offices and classrooms.

Q How many stories was that building?

A Oh, I worked the east side. I worked on the east side. I had five floors.

Q When you say you worked on the east side, did some-one else work on the west side?

A Yes, somebody else worked on the west side, so I was assigned on the east side when I went there.

Q How many cleaners worked in that building on your shift?

A On my side?

Q On your shift.

A Wait a minute. I think about ten, maybe eleven. I don't know really exactly -- about ten or eleven.

MR. STITT: Your Honor, may we fix the time? Perhaps I missed it.

THE COURT: Six years ago, I believe, they are

talking about.

Q How many years did you work in the 110 Street building, Mr. Williams?

A I worked in 110 Street, I think, about two years.

Q Was there a guard at this building -- security guard at this building?

A Not at night, not at night. It would be when I go in at night, but then, wouldn't be no more guard.

Q What time did you leave your shift?

A Oh, I left my shift 8:30 in the morning.

Q What building did you work at next, Mrs. Williams?

A S.I.A.

Q How many years did you work at S.I.A.?

A I was at S.I.A. about two years.

Q What shift did you work there?

A I worked from 12:00 to 8:30 in the morning.

Q What floors did you work on in S.I.A.?

A Wait a minute. I had seven and eight, eleven and twelve.

Q What were your duties on these floors?

A Clean the offices.

Q What did that require you to do? What did you do to clean the offices?

A I used-all of my offices had carpeting, so I had

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a vacuum cleaner and I dusted the furniture and I wash out the ash trays and empty the waste baskets and wash out the window sills and finger marks off the doors.

(Last answer read back.)

Q Did you do these duties every night that you worked at S.I.A.?

A I had to do them if they required it. I had to vacuum mostly every night because when someone else would be, you know, very upset, the floors would be very dirty and if I seen the walls had fingerprints, I had to wash them off at all times.

Q What kind of vacuum cleaner did you use?

A Hoover upright.

Q Upright?

A Yes.

Q I show you Defendant Exhibit R for identification, Mrs. Williams.

Does the vacuum cleaner that you use, a fair representation, appear on that page?

A It looked like this.

Q Looks like the middle vacuum cleaner?

A Yes.

Q Which is it?

A It's an upright -- looked like that.

Q Looks like that?

A Yes.

MS. RODENHAUSEN: The witness is pointing toward the middle vacuum -- the Eureka heavy duty -- and this is page R 12 of this exhibit.

Q Did you pull any trash from the S.I.A. Building on the floors that you worked on?

A You know, after I get it all together, I put it to go and the porter come and taken it out.

Q You will have to speak up.

Did you get all that?

A After I get up all of my trash, I would, you know, pull it to the elevator -- leave it at the foot of the elevator. Then the porter comes along and then he collects it up.

Q And precisely how many bags of garbage would you pull for each porter?

A Well, sometimes I have two big bags of garbage on each floor. Most of the times it would be two big bags.

MR. STITT: Your Honor, I would normally move to strike that characterization.

THE COURT: I didn't hear it.

MS. RODENHAUSEN: I didn't hear it.

MR. STITT: "Very big."

MS. GOODMAN: "Great big bags."

THE COURT: Strike it out.

Q Mrs. Williams, will you describe for us the bags that you put the garbage into?

A They are plastic bags -- large plastic bags.

Q Are they number ten plastic bags?

MR. STITT: I object to leading the witness. I don't know if --

THE COURT: What size are these bags, Mrs. Williams, in terms of feet? Do you know?

THE WITNESS: Large ones. Now I don't know the number. The large plastic bags which you see the garbage man collect the garbage on the street.

Q Mrs. Williams, is it larger than the plastic bag in here?

A Larger than that.

Q Is it two or three times? Give us some idea how many times the size of this bag (indicating).

A It's -- I am not good at that.

Q How many bags like this size would you empty into it?

A Wait a minute. I will tell you in a few minutes. Give me a chance. It's -- you can put about -- I don't know. I just can't answer, because I can't answer because I can't

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think of the number. I can't think of the size of the bag. It's the largest size plastic bag that you see that the garbage be sitting in on the street. That is the only way I can explain it.

THE COURT: That really doesn't help us very much.

MS. RODENHAUSEN: I will try to follow that up.

Q Do you have a cart, Mrs. Williams? Do you have a trash cart?

A Yes.

Q Does the bag --

A Fits the trash cart.

Q Fits the trash cart?

A Yes.

THE COURT: Let me ask you this: Is the Secretary going to show anything different with this witness than it's shown with any earlier witness on this subject?

MS. RODENHAUSEN: Not on the trash, your Honor. We'll get off. We'll move along.

Q Where did you work after S.I.A., Mrs. Williams?

A I am in Fairwether and Schermerhorn.

Q And are you currently working there, Mrs. Williams?

A Yes, that is where I work at now.

Q What are your duties in Fairwether?

A Clean the classrooms and offices.

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Q How many classrooms and offices do you clean?

A I don't have but one classroom in Fairwether. See, the rest of my rooms are all offices.

Q Do you know how many offices you clean in Fairwether?

A About -- wait a minute. Now, I'll tell you in a few minutes. I have about maybe 60 offices. I don't know; I am just guessing. I don't think that I can --

Q Are you assigned to certain floors in Fairwether?

A Yes.

Q Which floors do you work on?

A I have the fifth floor and I have the second floor -- part of the second floor, in Fairwether.

Q What kind of rooms are on the second floor?

A On the second floor is one large room which is a drafting room; and the rest of it, the rest of my rooms are two offices and one -- I call it a paper room. It might be a printing room. I don't know. I call it a paper room because I know they have a lot of printing paper going on in there.

Q What do you do to clean those rooms on the second floor?

A On the second floor I use the dust-mop and dust my window sills and empty my trash baskets, and in the two

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offices, if it needs a vacuum I vacuum. And like some times that particular night it don't need a vacuum, then I take the little broom and I pick up the trash with the little broom that I have, and empty my wastebaskets and clean off my table and desks. And in the paper room, I use the dust-mop because that has inlaid on it.

Q How many bags of trash do you pull from this floor?

A On the second floor?

Q On the second floor.

A Just one large bag of trash out of the big drafting room.

Q What other floor do you clean?

A Just the fifth floor in Fairwether.

Q What do you do on the fifth floor?

A Clean all the offices and vacuum the floors. I have five floors to be vacuumed up there.

Q What kind of vacuum do you use in Fairwether?

A Same kind I showed you on there.

Q Do you use a cart for your supplies in Fairwether?

A A what?

Q Do you use a cart for your supplies in Fairwether?

A What do you mean? To carry them around in?

Q How do you transport your supplies from place to place?

A Oh, well, see, I have a -- I have a utility room and I bring my supplies up from the basement. I put them in the utility room so every night I come, all I do is go in my utility room on my floor and get my supplies out.

Q Is that utility room locked?

A What?

Q Is that utility room locked?

A Yes, I lock that.

Q And you have a key for that?

A Yes, I have a key for my floor so it locks all floors.

Q You mentioned that you also work in Schermerhorn?

A Yes.

Q What do you do in Schermerhorn?

A Same thing. Clean all the floors and, you know, wash out fingerprints, clean and empty out my wastebaskets and clean my ash trays.

Q How many floors do you work in Schermerhorn?

A Oh, that's just one floor.

Q One floor. Which is that?

A See, I have one -- see if I can describe it to you. I am in one office on that fourth floor in Schermerhorn and it has, you know--I go in, see. There is a lot of offices in that one particular part.

Q How long do you spend in Schermerhorn each night?

A Sometimes, I am in there two hours -- two hours the most. And then, sometimes, like, if it's -- they have had an entertainment or something, sometimes it's may be two-hours-and-a-half.

Q Do you pull trash in Schermerhorn?

A Oh, sure; yes.

Q How many bags of trash do you pull from that fourth floor?

A In there sometimes I -- a lot of times I have two bags of trash.

Q Do you ever have more than that?

A Do I have any more?

Q Do you ever have more than that?

A No.

Q Do you clean any bathrooms in Schermerhorn?

A Well, in my part where I work -- over there is a little small bathroom just about as big as this square right here.

Q The square you are sitting in in the witness stand?

A Yes. So I wash the face bowl out. I am supposed to wash the face bowl out. And, you know, wash around the commode and keep it clean.

Q Is there a toilet in that room?

A Yes, there is a toilet in there. See one part -- just like it's half of this. Here is your face bowl and the other half is where, you know, your toilet.

Q You clean both of those fixtures?

A Oh, yes.

Q How do you clean them?

A I have a -- I clean them with a rag: wash the face bowl, wash around -- wash the face bowl off with a rag, and I have a little mop where I clean out the toilet seat and -- toilet, and I go around the toilet seat and around the bottom of the commode.

MS. RODENHAUSEN: No further questions.

THE COURT: Walker plaintiffs?

MS. LIBOW: No questions, your Honor.

CROSS-EXAMINATION

BY MR. STITT:

* * * *

* * * *

[1593]

Q You have been assigned, since March, 1971, to S.I.A., Fairwether, and now Schermerhorn?

A Yes, Fairwether and Schermerhorn, right.

Q In one of those buildings -- Schermerhorn -- you have been assigned among other areas, a toilet facility which you just described?

A Yes.

Q Is that a private toilet?

A Yes.

Q In the dean's office?

A Yes.

Q How long does it take you to do the cleaning in that particular commode and toilet?

A Oh, it doesn't take long because it's not that -- it's not that dirty because I keep it clean because I do it every night; so it really don't take you long.

Q Maybe five, ten minutes?

A Oh, say I will touch up the woodwork if I see fingerprints. I'll say I give myself about 20 minutes.

Q No more than 20 minutes?

A Yes, because it's not dirty because I keep it clean.

Q And just the dean uses it?

A It's the people who has the offices in there. See, that's their private--

Q But that is not open to the public?

A Oh, no.

Q There are public lavatories in Schermerhorn, aren't there?

A Oh, yes, but I have nothing to do with it.

Q Men's rooms and women's rooms?

A Yes.

Q And it's the janitors who handle those--

A Yes.

Q -- lavatories?

A Yes.

Q And they do that every night, don't they?

A I guess so. I don't know. I don't pay no attention to that.

Q But your best recollection would be, that's done

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every night?

A Yes.

Q And at Fairwether or S.I.A., were you assigned to any small toilets?

A No.

Q Basically, you have been assigned -- I will try to cover these three buildings so we can get out of here at a decent hour, Mrs. Williams -- you have been assigned to classrooms and offices?

A Yes.

Q Have you done any cleaning in hallways?

A Oh, no.

Q Ever use a dust-mop?

A Oh, yes, I have to use a dust-mop. My floors, all of them don't have carpeting, so those that don't have carpeting, I use dust-mop.

Q Do you ever use that dust-mop in the hallways?

A Oh, no.

Q Does that cover the basic kinds of rooms that you have been assigned to in these three buildings?

A Oh, yes.

Q And to go through your duties: you dust tables and furniture?

A Yes.

Q And you wipe window sills?

A I wipe the window sills. If they are dirty, I wash them.

Q Do you use a damp rag to do that or a sponge?

A A sponge I have.

Q Do you spot-clean the walls?

A Yes, where I see the fingerprints, where they put their foot at, I do.

Q And you wipe those window sills and you spot-clean those walls just as high as you can reach?

A Yes.

Q You don't work on any ladders, do you?

A Oh, no.

Q Do you empty wastebaskets?

A Yes.

Q And ash trays?

A Yes.

Q And on occasion you polish furniture?

A No, I don't polish no furniture.

Q Any other duties that you do?

A No, that's all.

Q Your equipment -- we have mentioned the rags and the sponges, and the upright Eureka vacuum?

A Yes, and the dust-mop.

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Q That is a 24-inch dust-mop?

A Yes, dust-mop.

Q How much does that weigh about?

A Is a light dust-mop. I'll say maybe it weighs about -- I don't know about weight so I will just say one pound. I don't know nothing about weight.

Q Including the handle?

A What?

Q Could it go about three-and-a-half pounds with the handle?

A Yes, say three-and-a-half pounds.

MR. BERKE: Move to strike the answer. She said, "I don't know about weight," and I move to strike the answer.

MR. STITT: Your Honor, I will accept the testimony.

MR. BERKE: I move to strike the testimony.

THE COURT: The testimony is entitled to very little weight as I said earlier in this trial.

MR. STITT: And, apparently, also the dust-mop, your Honor.

THE COURT: I will permit it to stand.

Q Have you used a cart in S.I.A. or Fairwether or Schermerhorn?

A Yes, I have a cart.

Q Is that called a Waste-mobile?

A I just call it a cart. I don't know what they call it.

Q I show you a contraption at pages 18 and 19 of the University's Exhibit R for identification, Mrs. Williams. Is that the cart you use?

A Yes.

Q You are pointing to the one on page 18?

A Yes, it look like that.

Q You put your plastic bag inside that, right?

A Yes.

Q And that is what you empty these wastebaskets and ash trays into?

A Yes.

Q Do you use a toy broom?

A Yes.

Q Does that about cover your equipment?

A Yes.

Q You haven't been assigned to these public lavatories men or women, in either S.I.A., Fairwether or Schermerhorn?

A No.

Q It's the janitors who clean those, right?

A Yes.

Q They do that every night in those buildings, don't

they?

A They supposed to.

Q To your best knowledge, they do do that every night, don't they?

A To my best knowledge, they do.

Q And you are not assigned to elevators, stairways or lobbies?

A No, nothing like that.

Q Or corridors?

A No.

Q It's the janitors who clean in those areas, is that right?

A Yes.

Q You don't wet-mop, strip, wax or buff floors?

A No, nothing like that.

Q It's the janitors who do that in your buildings?

A Yes.

Q Is there wet-mopping going on in each of your buildings every night when you have been there? Fairwether?

A Yes, the porter has to do it.

Q That is the janitors that do that?

A Yes.

Q Every night in these three buildings, do those bags of rubbish that come from your Waste-mobile, and those

from the other maids and what have you, do these have to be taken somewhere?

A Just pull it to the elevator and the porter comes and picks it up and takes it off the floor.

Q The janitor comes along?

A You pull it out in the hall. You pull it out in the hall to the elevator and you leave it there and then, see, the porter comes along and he removes it.

Q Does he pick them up and put them in any truck of some sort?

A Yes, the garbage truck -- the big garbage truck that's got to go outside.

Q Let me show you again. These photographs are not made of a garbage truck from any of the three buildings in which you have work, Mrs. Williams, but I am going to show you a photo of a garbage truck from another building, page five, same truck but from different angle; and I will ask you if that is the same kind of truck that you have seen in your three buildings?

A Yes, looks like that.

Q And you have seen the janitors loading those trucks?

A Yes.

Q Have you seen them take them downstairs in the

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elevators?

A They don't go no elevators. Those trucks are down in the basement.

Q They keep them?

A They take the garbage down to them.

Q What do they do with those trucks of garbage after they have been loaded in the basement?

A They have to go outside when it's time for the garbage man come to collect.

Q Those trucks have to be pushed out of these three buildings?

A Yes, when it's time for the garbage to be collected, the garbage man come.

Q It's the janitors who push those trucks out of the buildings?

A Yes.

Q That has to be done every night, doesn't it?

A Yes.

Q In all of your buildings?

A Yes.

Q You have never been called upon to push any of those trucks?

A Oh, no, I don't do that because I am no janitor.

THE COURT: What is that answer?

MR. STITT: May I have that answer read back?

A I said --

MR. STITT: No, we'll just ask the reporter to read it back, please.

(Answer read.)

Q Are you familiar with the floor machines which are used for -- if I may refresh your recollection -- to strip and wax floors on occasion?

A What?

Q Let me show you these two objects at page 13 of University Exhibit R for identification.

Have you ever seen machines like those, Mrs. Williams?

A Yes.

Q You have?

A Yes.

Q Where have you seen them?

A Like if they going to do a floor.

Q Have you seen those in Schermerhorn and Fairwether and S.I.A.?

A Yes, when they going to do a floor.

Q And those are the janitors who use these machines to do those floors?

A Yes.

Q Have you ever been trained in the use of those machines?

A Oh, no.

Q Have you ever been asked to use one of those machines?

A Oh, no, no.

Q I am going to show you a contraption at page one of Exhibit R.

Have you ever seen a mop-truck like that at the university?

A I think I have in S.I.A.

Q In S.I.A.?

A I think I have, yes.

Q Have you seen the janitors use a mop-truck like that to clean out the lavatories in S.I.A.?

A I don't know where they use it.

Q Or maybe mop the corridors?

A Yes.

Q The corridors?

A Yes.

Q All right.

MS. RODENHAUSEN: Your Honor, without unduly interfering, could we just have the court please direct Mr. Stitt to let the witness finish and complete her answer?

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MR. STITT: I apologize.

Had you finished your answer to my question?

A Yes. Of this?

Q Yes.

A Yes, I did.

Q All right.

You have never been required to use one of these mop-trucks, have you?

A Oh, no.

Q Are you familiar with this kind of truck at pages 3 and 4 of University Exhibit R? Have you ever seen those before?

A I have never seen it. I haven't seen it.

Q Have you ever seen Venetian blinds being cleaned at the university? Seen them being washed?

A No.

Q In any event, you haven't been required to use that contraption shown at pages 3 and 4?

A No.

Q Now, I show you a piece of cleaning equipment at pages 15 and 16 and 17. This is the same object, Mrs. Williams, but taken from different angles, again referring to University Exhibit R for identification.

Have you ever seen that Atlas Vac-Mop Machine or

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a wet-dry vacuum cleaner?

A There is a vacuum cleaner; I have seen a big vacuum cleaner.

Q About that size?

A I can't tell.

Q Talking about a machine that is somewhat bigger than Eureka?

A Yes.

Q The janitors use those machines?

A Yes.

Q You don't use those machines?

A No, I don't use that.

Q And, of course, you don't handle 55-gallon drums of cleaning solvents?

A Oh, of course not, no.

Q You have testified you don't work on any ladders, do you?

A No.

Q Was there a time clock where you had to punch in in each of your three buildings?

A Yes.

Q And bulletin boards by each of those time clocks?

A Yes.

Q During the years that you have been at the

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university, have you seen notices on those bulletin boards?

A I have seen, yes, I have seen.

Q Have some of those notices been postings for job openings --

A Yes.

Q --including janitor or heavy cleaner or security guard?

A Yes.

Q Have you ever applied for any of those job openings?

A Oh, no.

Q Have you seen postings for courses that the university offers?

A No, I haven't seen that.

Q In any event, you haven't applied, I take it, for any course at the university?

A No.

Q Mrs. Williams, could you give me your height and your weight, please?

MS. RODENHAUSEN: Objection.

THE COURT: Overruled.

A What?

Q Could you give me your height and your weight?

A Wait a minute -- I am five feet with shoes.

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Q Five feet?

A With shoes.

Q With shoes. And without shoes?

A I don't know -- four feet something, but I don't know what it is.

Q Okay, under five feet.

A And I weigh about 121.

* * * *

REDIRECT EXAMINATION [1608]

BY MS. RODENHAUSEN:

Q Mrs. Williams, that bathroom that you clean in Schermerhorn, do you know how many offices have access to that bathroom?

A Yes, wait a minute. I would say about ten.

Q When you worked on 110 Street in the building that you worked in on 110 Street, how many janitors worked in that building?

A I would say about ten or eleven.

Q What about in the building in Fairwether when you worked there, this last year?

A How many janitors?

Q Yes.

A Just one.

Q Do you know that janitor's name?

A When I first went there?

Q In the last year.

A What? Now?

Q Right now.

A Gilliam.

Q And Miss Gilliam is a woman, is that right?

A Yes.

* * * *

[1670]

THE COURT: I will reserve decision on the motion to dismiss the Brennan complaint. Having done that, Mr. Stitt, are you ready to go forward with your proof?

MR. STITT: I take it your Honor wants me to desi from the further statements that I was going to make about the record to date and the claims of --

THE COURT: I suggested I felt that the scholarship was thorough, worthy and admirable, but it was not really of that much assistance to me in the task under my nose at the moment.

MR. STITT: I did it for more purposes than just

scholarship, your Honor.

Your Honor, I would like to draw attention to the answer filed in the Walker action by the Transport Workers Union, and that of course includes the International, the Local, and Mr. Hanaberry and Mr. O'Brien, the union officers, and I would refer to it collectively as the answer of the union.

It is dated August 3, 1973, it's signed by John F. O'Donnell as a member of the firm of O'Donnell & Schwart

The entire answer is before the Court, and I will not bother to read at this time all of the allegations and statements in this answer that I consider significant but simply those that I think are of such significance and importance that it puts the University's case in proper framework.

First of all, paragraph five-D, the union admits that during August-September 1972, the union entered into discussions with the Equal Employment Opportunity Commission, but except as thus expressly admitted deny the allegations contained in paragraph 5-B of the complaint.

Next paragraph 10,"Admits the union is the exclusive bargaining agent with regard to the employees covered by two written collective bargaining agreements dated July 1, 1972, copies of which are before this Court

parenthetically now in evidence, your Honor; and previous agreements to which the Court is respectfully referred; that the persons employed as light cleaners (including the named plaintiffs) and in 29 other job categories are covered by the first agreement, and that persons employed in four designated guard categories are covered by the second agreement, but except as thus expressly admitted deny the allegations contained in paragraph 10 of the complaint."

Next, out of order but I think it's part of the narrative framework, 65--

THE COURT: These are being offered in evidence against the union?

MR. STITT: At least against the union, your Honor, if not against the plaintiffs Walker in view of the agency relationship, and also if not against the plaintiff Brennan by reason of estoppel.

MR. DRYFOOS: Your Honor, I don't understand when you say being offered in evidence. I understand that all the pleadings are a part of the record of the case.

THE COURT: Well, they are for certain purposes but Mr. Stitt is making these specifically part of the record deeming them to be admissions against interest, I assume.

MR. STITT: At least for that, your Honor.

THE COURT: Very good.

MR. STITT: Paragraph 65, "Admit that throughout the period coverd by this complaint"-- this is page 11 --" the union has been certified by the National Labor Relations Board as the exclusive representative for purposes of collective bargaining of all employees in the units covering buildings and grounds and residence halls maintenance employees, and guards employees, that the National Labor Relations Act imposes on all unions, including the union defendant herein, a duty to act fairly towards the employees they represent, and that the union fulfilled this duty throughout the period covered by the complaint and continues to meet that duty today; but except as thus expressly admitted denies the allegations contained in paragraph 65 of the complaint."

Paragraph 17, "Admit that the named plaintiffs are employed as light cleaners (formerly designated "maids") and at all material times have been assigned to designated duties at the University's administrative and academic buildings, but except as thus expressly admitted, deny the allegations contained in paragraph 17 of the complaint."

Paragraph 17, your Honor, is what I consider the key paragraph in the entire Walker complaint, which was an

allegation, "At all times relevant the named plaintiffs were employed as maids at a single establishment, Columbia University, where they perform essentially the same work as that performed by janitors."

And the union's response is of course a denial of that allegation that it's substantially the same work.

Continuing, paragraph 19, "Admit that the union is the exclusive bargaining agent for employees in the categories covered by the aforementioned collective bargaining agreements, and on information and b elief, applicants for all of these positions are considered without regard to sex; that women have applied for employment in six of the aforementioned categories; and that women have been hired in each of these categories, but except as thus expressly admitted, deny the allegations contained in paragraph 19 of the complaint and the sub-paragraphs thereof."

MR. DRYFOOS: Your Honor, if I might, could we have the first part of that sentence read back? I'm sorry. Just the paragraph reference will be all right.

MR. STITT: That was paragraph 19.

MR. DRYFOOS: Thank you, your Honor.

MR. STITT: Continuing, your Honor, beginning at paragraph 53, "Admit that on or about January 8, 1972, the

plaintiff Cora Walker was given a notice of lay-off, was given for financial reasons only; but except as thus expressly admitted, deny the allegations contained in paragraph 52 of the complaint."

54: "Admit that a similar notice of lay-off for financial reasons only was given to 29 other women employed in the maid category; but except as thus expressly admitted, deny the allegations contained in paragraph 54 of the complaint."

55: "Admit that no janitors/heavy cleaners, an understaffed classification, were given notice of lay-offs, but except as thus expressly admitted deny the allegations contained in paragraph 55 of the complaint."

Continuing paragraph 79 --

MS. RODENHAUSEN: Your Honor, I don't mean to interrupt but it's my understanding the ruling is that you are accepting into evidence the admissions that are now being read into the record by Mr. Stitt.

THE COURT: As against the union.

MS. RODENHAUSEN: And Mr. Stitt also characterized his offer as being one of estoppel against the Secretary.

THE COURT: He may or may not be correct in that principle of law. That is his position to me as a matter of law.

MR. STITT: Yes.

MS. RODENHAUSEN: That's correct but -- all right.

MR. DRYFOOS: Your Honor, a question of the Court. I don't understand how these are admissions against interest. For example, I don't understand how a statement that the union is an exclusive bargaining agent of a given set of employees is an admission against interest.

THE COURT: Of fact. It's an admission of fact made by you in a litigation.

MR. DRYFOOS: Against my interest though? I am just responding to your statement that these are admissions against the interests of the union and with that respect I would say that certainly we struggled a long time to become an exclusive bargaining agent. It's hardly an admission against our interest.

THE COURT: That is the legal category under which they are being admitted. You claim it's in your interest;as a matter of fact that is another matter.

MR. STITT: I would simply use the broad category admission.

THE COURT: These are admissions.

MR. STITT: And I spoke certainly with respect to the union and also I believe mentioned the plaintiffs Walker since it's their union, and the plaintiff Brennan

because of the estoppel but I agree that there would probably be some argument on that point.

THE COURT: Mr. Dryfoos, I meant no -- I did not mean that they were against your interest. That was merely the legal pigeon-hole in which I was observing these to be admissible.

MR. BERKE: Your Honor, further as to that the Secretary would just preserve his rights here, we would formally object to this so that the issue would be framed.

THE COURT: No question about it. If you want me to, I will deem the word admission as having been used throughout.

MS. LIBOW:Your Honor, in addition we would like to register our objection to the agency theory expressed by the defendant.

THE COURT: All right, very good.

Go ahead.

MR. DRYFOOS: And for the record I am going to object partiallybecause I don't understand why these --

THE COURT: Admissions.

DR. DRYFOOS: Why whatever the counsel for Columbia has categorized them, why they are being read into the record at this time. In any event, I object to it.

THE COURT: All right, overruled. Go ahead.

MR. STITT: 79: "Admit that on or about August 14, 1972, the University gave notice of lay-off for financial reasons only to approximately 28 women employed in the maids/light cleaner category including the named plaintiffs herein but except as thus expressly admitted deny the allegations contained in paragraph 79 of the complaint."

Continuing, at paragraph 79, 79: "The union negotiated and executed the foregoing collective bargaining agreements in the firm belief that the terms and conditions contained therein, including the job descriptions (incorporated by reference) and the wage differential for janitor/heavy cleaner and maid/light cleaner and other job classifications were fair and reasonable and non-discriminatory. "

90: "The contracts were approved by the membership of the union with full knowledge of the different job descriptions and different wages paid to heavy cleaners and light cleaners and with full knowledge of the proceedings pending in the State Division of Human Rights."

Continuing paragraph 97.

MS. GOODMAN: Your Honor, could we just interrupt? This document is being offered into evidence, and it is part of the record already. We are spending a lot of time while it's being read into the record for seeming

effect. I don't know why we need to spend all of our time --

MR. STITT: I have just three more paragraphs.

MS. GOODMAN:--While Mr.Stitt reads it to us.

THE COURT: Go ahead.

MR. STITT: 97: "Since July 1, 1965, the earliest date mentioned in the complaint, the terms and conditions of the employment of the named plaintiffs and the class whom they purport to represent have been covered by collective bargaining agreements between the University and the union."

98: "Under the requirement of the Labor Management Relations Act as amended, inter alia, the union and the University were charged with the legal duty to bargain in good faith."

99: "The union negotiated and executed the foregoing contracts in the firm belief that the union and the University had performed its duties properly and that the terms and conditions contained in the foregoing collective bargaining agreements were fair, reasonable,and non-discriminatory and were so regarded by the union and its membership.

I thank the Court for its attention.

THE COURT: All right.

MR. STITT: Your Honor, at this point I would ask permission to have the assistance of Mr. Limitone in the

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witness box as I am reading into the record questions and Mr. Limitone would read into the record responses of testimony obtained by the University before trial from plaintiffs Brennan.

THE COURT: Very good.

MR. STITT: The record should show --

MR. BERKE: Objection, your Honor. If there is any deposition testimony that will be offered into the record, the lines should be specified, the document should be offered in. I don't see why we have to take the time to have the record read in particularly in this dramatic nature in which it seems to be set up. Can't we just have -- I believe the depositions would be filed with the Court and the pages could be numbered, and we would then be able to look at the depositions and object to it.

THE COURT: It's a matter of question of the ease of presentation. Mr. Stitt, is there anything to that suggestion?

MR. STITT: No, sir, your Honor. I believe that this is the framework to which I am entitled to use, and I think it's the best way of proceeding with the University's case. I don't intend to read all of these questions and all of these answers in but I want them before the Court in this fashion.

MR. BERKE: In addition, your Honor --

MR. STITT: I do claim that right.

MR. BERKE: -- if this is to be deposition testimony we object to it on the grounds that if Mr. Stitt wants to produce the witness and ask him questions as his witness he may. A deposition is a tool of discovery and not to be used in lieu of testimony presented at trial. He cannot call a witness through a deposition. He must call the witness --

MR. STITT: If your Honor please.

THE COURT: It depends on who the witness is.

MR. STITT: If your Honor please, I call attention -- has my adversary finished?

MR. BERKE: I believe that Mr. Stitt designated the witness is the plaintiff Brennan and I know that that is not so. I assume it will be a representative of the plaintiff Brennan, possibly a compliance officer whom he deposed. He is going to introduce testimony as to the compliance officer. The way to do that is to call the compliance officer. If he wishes to call him as a hostile withesss he has to make tha showing.

THE COURT: Isn't he a party?

MR. BERKE: He is not a party, your Honor. He is certainly not a party. He is an investigator for the

Department of Labor. He is like a member of the FBI, your Honor. He cannot introduce a statement that this man made outside of the Court, without putting him on the witness stand. If he wishes to call him as a witness that's his right but I object strenuously to --

THE COURT: Mr. Berke, let me ask you this. Do you stand behind what this man said in this deposition or do you not?

MR. BERKE: Your Honor, I would stand behind what he would say on the witness stand where your Honor could judge his demeanor on credibility.

THE COURT: You are not answering my question.

MR. BERKE: I would say that your Honor we would stand behind what our investigator says but I would not allow out of Court testimony to be read into the record willy-nilly.

THE COURT: Did you have an opportunity to cross examine?

MR. BERKE: I don't believe that we did cross examine in this deposition.

THE COURT : Were you present and had the opportunity to cross examine?

MR. BERKE: I believe Mr. Gorin was present and may have had the opportunity to cross examine but I will not

allow or agree that this deposition should be offered into evidence.

MR. STITT: Your Honor, may I be heard?

THE COURT: Yes, I would appreciate your being heard because I regard this as just --

MS. GOODMAN: May I state for the record --

THE COURT: I don't really regard this as the height of something and I don't know how to categorize it. You have a man you say he's told the truth. You were there. You could cross examine him and all of a sudden you come in and block this. Is this a technicality or is there some substance to be gotten at by this?

MR. BERKE: Your Honor, I would state this for the record. I was not present at the deposition of this compliance officer. I was present at the deposition of Mr. Joseph Nye with Mr. Stitt. I am very reluctant to have testimony offered in where a Judge was not present to assure that the conduct of the parties --

THE COURT: That has nothing to do with it. It's the question of the facts. We are getting at the facts in this trial. Trying to learn what the facts are. That is all we are after.

MR. BERKE: That's correct, your Honor, and if Mr. Stitt wishes to offer --

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THE COURT: Did your witness misconstrue something? Did he not understand something? I don't assume he lied about anything.

MR. BERKE: I don't assume he lied either, your Honor, and I don't believe that.

THE COURT: I assume Mr. Gorin was there to protect your interests if he made a mistake. What is this?

MR. BERKE: But the way in which testimony is offered is through the testimony of the witness so that your Honor can observe him, hear him, and so that --

THE COURT: The only possible ground you would have for objecting to this is that you are in the position of a government agency, of a different standing than any normal party. If you were representing the General Motors Corporation and they had taken the deposition of somebody from the General Motors Corporation, I wouldn't have one second's hesitancy in saying that it could be used the way Mr. Stitt wants to use it. I have some reservation because it's a government agency and I am not sure to what extent you are a party and he therefore is a representative of a party. And that is the only possible leg at this point you have to stand on.

I regard it as a technical leg at best and I am

trying to determine whether we should be standing upon technical legs.

MR. STITT: If your Honor please --

MS. GOODMAN: May we just for the record comment on two points on this?

MR. STITT: Your Honor, could I have the floor?

THE COURT: Yes, you have the floor for a moment.

MR. STITT: Your Honor, I call attention to the answers to interrogatories served in this action by the United States Department of Labor. We received our copy on May 3, 1974; and in particular I call attention to the Secretary's response. Incidentally, this was verified by Miss Bodian and also had the represented signatures of Messrs. Klainbard, Laruffa and Gorin as well as Miss Bodian; and I am beginning at response six, the second paragraph:

"Those representatives of the Secretary who have been directly involved in the conduct of the investigation: Norman Bromberg, Area Director, Manhattan Employment Standards Administration, United States Department of Labor, 26 Federal Plaza, New York, New York; George Barish, Compliance Officer, Wage and Hour Division, United States Department of Labor, 881 Gerard Avenue, Bronx, New York; Abraham Klainbard, Area Director, Wage and Hour Division,

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United States Department of Labor, 821 Gerard Avenue, Bronx, New York.

Others with personal knowledge of the subject matter of some of the answers to the interrogatories --"

I then served a notice.

THE COURT: Mr. Stitt, do you -- and I put this to both you and Mr. Berke -- do either of you know of any law on the subject of whether or not a responsible representative of the Secretary who is a party to this action may not be deposed and his deposition used in accordance with Rule 27 just as any other party would be used? Do you have any learning for me on that subject?

MR. BERKE: I do not at my hand, your Honor.

MR. STITT: I would call attention to Rules 32 and I believe 31, I forget the sub-division of the Federal Rules of Civil Procedure. Furthermore --

MR. BERKE: I would request that the Court give us --

MR. STITT: I would draw attention to the University's notice of examination before trial served on June 10, 1974: "Please take notice that pursuant to Rules 26 et. seq. of the Federal Rules of Civil Procedure, the defendant-third-party plaintiffs will examine the plaintiff before trial --" that is the plaintiff Brennan -- "-- upon oral deposition by

the following persons, before Joel Hillman, C.S.R. or some other duly authorized person ---"

MR. BERKE: Your Honor, that is a self-serving statement.

MR. STITT: "-- At room 601, United States Courthouse, Foley Square, City, County and State of New York." And thereafter again were listed Mr. Barish, Mr. Bromberg, Mr. Klainbard.

THE COURT: What Mr. Stitt is saying, is that if you felt they were inappropriate to be deposed, the onus was upon you to move to vacate the notice of deposition.

I am looking at Rule 32 and it says, "The deposition of a party or of anyone whom at the time of taking the deposition was an officer, director, or managing agent or a person designated under Rule 30-B(6) or 31-A to testify on behalf of a public or private corporation, partnership, or association, or governmental agency, which is a party, may be used by an adverse party for any purpose."

On the basis of that, I will overrule your objection. You may proceed.

* * * *

[1692]

MR. STITT: Your Honor, this will first be from the deposition of the plaintiff by Abraham Klainbard taken by the defendant and third-party plaintiffs pursuant to notice on July 9, 1974, in Room 601. The appearances were Samuel Gorin, Esq., Deputy Regional Solicitor and Miss Bodian for

the plaintiff and my office by me for the defendant and third-party plaintiff.

THE COURT: I take it the witness was duly sworn.

MR. STITT: The deposition or the transcript was sworn to by Mr. Klainbard before a notary public under date of July 29, 1974.

(Mr. Stitt and Mr. Limitone read as follows:)

"Abraham Klainbard, being duly sworn was first examined and testified as follows, examination by Mr. Stitt:

"Q Mr. Klainbard, have you given your full name to the court reporter?

"A I have.

"Q Will you give us your home address,please?

"A 2575 Gerome Avenue, Bronx, 10468.

"Q Will you tell us your position with the Department of Labor?

"A My position is Area Director, Employment Standards Administration, Wage and Hour Division.

"Q Is that the Bronx Office?

"A I am in charge of the Bronx area office.

"Q Is that the office of which Mr. Bromberg who is on my left and Mr. Barish who was here yesterday worked for, formerly worked?

"A Yes.

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"Q You are physically located in the same office?

"A Yes."

MR. STITT: Continuing page 4, line 4.

"Q Did there come a time a complaint or case or investigation which ultimately resulted in our being in this courtroom this afternnon, came to your attention involving Columbia University?

"A Yes.

"Q When was that?

"A Early '72.

"Q Will you give us the date, please.

"A January 12, 1972."

Continuing at page 5, line 20.

"Q What steps did you take at that time?

"A I received the complaint, I analyzed it, determined there was a sufficient basis for an investigation. Under my direction, the clerks in the office physically set up a file, and directed that Mr. Barish be assigned.

"Q Did you play any part in the conducting of the investigation, or did you leave it to Mr. Barish?

"A Mr. Barish did the field work under my general supervision.

"Q Did you attend any interviews or conferences in your office beginning with January 12, 1972?

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"A Conference with whom, sir?

"Q With anyone.

"A With the compliance officers, yes.

"Q That would be Mr. Barish?

"A Mr. Barish and subsequently with Mr. Bromberg."

Continuing page 10.

"Q Take it in chronological sequence."

Line 8:

"A If you like. The first entry I have here is February 23rd of '72 and it was merely 'OK.' March 27th. My instructions to the Compliance Officer, briefly, says to interview, which is my shorthand notation to him, and instruction.

"Q That was to Mr. Barish?

"A Yes.

"Q What persons did you suggest that you interview, do you recall?

"A I made no suggestion of specific persons except we were discussing categories of employees.

"Q What categories do you recall discussing?

"A We were interested in maids and porters particularly.

"Q Any others?

"A Not specifically.

"Q Just maids?

"A Maids and porters.

"Q And do you use that term to mean janitors or heavy cleaners?

"A I mean that to be male and female janitors.

"MR. STITT: The record should show through this deposition -- "

MR. BERKE: Objection, your Honor, this would not be an admission. This is a statement by Mr. Stitt on the record.

THE COURT: Is this a clarification of the witness' answer that would otherwise require a number of questions?

MR. STITT: Yes, it was agreed to by Mr. Gorin.

"MR. STITT: The record should show through this deposition the words porters, janitors and heavy cleaners have been used and I think it has been clear that is referring to the same group of cleaners at Columbia.

"MR. GORIN: No objection.

"Q Proceed, Mr. Klainbard.

"A I have a notation on April 3, '72, that I re-assigned the case to Mr. Bromberg. This is purely a routine entry meaning no more than that.

"Q Did you have any discussions with Mr. Bromberg at

that time?

"A Again, in the normal course of business, we would have reviewed the file to this point, and since Mr. Barish was ill, we would review whatever the file contained and directed to Mr.Bromberg's attention for further development. The next entry was April 24th, when I reviewed it again with him -- again with no specific entry. At this point, the next entry I have is September, and I have a notation that Mr. Bromberg was to make an appointment to resume the investigation, my instructions to him to resume.

Presumably in this interim we did not pursue the investigation.

"Q What date is that in September?

"A September 25th.

"Q 1972?

"A Yes, sir.

"Q What prompted you to give him that instruction on that date, do you recall?

"A In the interim, there was publicity, I believe, with respect to the lay-off of maids; there was information provided us that the State Human Rights Commission was investigating Columbia University, the Equal Employment Opportunity Commission was investigating Columbia University. It seemed to me a matter of concern that Columbia might feel they're being harassed by a

multiplicity of governmental agencies and this, in our awareness of public relations, would not be the wisest course.

I think there was also either a strike or a threat of a strike at that time, and also we do not intrude in a strike situation.

"Q During this period your investigation was in limbo -- if I may use that word.

"A It was suspended, I would say.

"Q You mentioned Equal Employment Opportunity Commission. What contact did you have with that agency?

"A I did not have contact with that agency. Mr. Bromberg I believe spoke with Mr.Mackey, the director, Regional Director of EEOC.

"Q Is that M-a-c-k-e-y?

"A I believe so. And based on a conversation which he related to me, Mr. Mackey was going to or was pursuing an EEOC investigation, covering the --"

MS. GOODMAN: Objection, your Honor, that is hearsay.

"A Covering the ground of equal pay."

MS. GOODMAN: I ask that it be struck, your Honor. He is reporting as to what Mr. Mackey --

THE COURT: This was one of his subordinates

reporting to him?

MS. GOODMAN: No, it's Mr. Mackey who I believe is still the Regional Director of the EEOC in New York. EEOC is not a party, anything they say is not relevant, is not an admission against anybody, and coming from somebody from the Department of Labor, is rank hearsay.

MR. STITT: Your Honor, this is a conversation between Mr. Klainbard and Mr. Bromberg, and one of the contentions we have in this action is that the various union agreements which are before the Court, particularly the '70 and the '72 agreements, were the product of negotiations which include contact with federal agencies including the Federal Mediation and Concilation Service and the Equal Employment Opportunity Commission.

MS. GOODMAN: If they are to --

THE COURT: All right, I will permit it to stand.

MR. GOODMAN: Our objection --

THE COURT: Overruled.

"Q What further reports did you get concerning EEOC? You may refresh your recollection by referring to the sheets in your files.

"A I don't think I have any other recollection or

contact with EEOC.

"Q What entries do you have concerning your contact in this file following the entry of September 22nd I believe you said?

"A September 25th. I have a notation on February 1, '73, of a telephone conversation with my superior at the Regional Office.

"Q Who is that?

"A That was a man who is no longer there. Mr. Kammerman, assistant to the Regional Administrator.

"Q Give us the full name, please.

"A Hyman H. Kammerman. K-a-m-m-e-r-m-a-n, assistant to Mr. Frank Mercurio, Regional Administrator.

"Q Tell us about your conversation with Mr. Kammerman.

"A On September 29, 1972, I wrote a memorandum to Mr. Mercurio who, as I said, is the Regional Administrator, indicating the investigation of Columbia University was temporarily suspended pending resolution of job security matters before the State Human Rights Commission and the EEOC, and the reason for that was the publicity and the adverse reaction possible concerning a third governmental investigation.

I informed him that the job security problem had

been settled and that we will resume investigation.

In November, I wrote another memorandum to him.

"Q Will you give us the date?

"A November 27th. And, indicating therein, based upon a telephone conversation with Mr. Mackey, District Director of EEOC, which Mr. Bromberg presumably had, that I wished to drop the investigation because the matter of equal pay was part of the EEOC investigation and will be handled by his office.

Now, after that, in the sequence -- this was November 27th.

February 1st of '73, I spoke to Mr. Kammerman and we decided to resume the investigation.

"Q Did Mr. Kammerman call your office or did you call him?

"A I do not recall.

"Q What was said during that conversation? What prompted this communication in February, 1973?

"A An additional complaint was received on or about that time.

"Q From whom to whom? Was that to your office or to Mr. Mercurio's office?

"MR. GORIN: That's confidential.

"MR. STITT: Are you directing the witness not to

answer?

"MR. GORIN: I am directing the witness not to answer.

"Q Did you receive any further word from the EEOC on the results of their inquiry?

"A No, sir."

MS. GOODMAN: Objection, your Honor. I think anything that they heard from EEOC is not -- is totally hearsay. They are not a party in this action.

Secondly, it is not relevant.

MR. STITT: Do you have the answer to that, Mr. Reporter?

THE COURT: What is the purpose of questions that go to what the Secretary's --

MR. STITT: I simply want to bring that this was a negative thing as far as they knew with EEOC.

THE COURT: The Secretary's awareness of the picture at that time?

MR. STITT: Yes, that's right.

THE COURT: For that purpose alone I will overrule the objection.

"A No, sir.

"Q Did you receive any findings from the EEOC as to whether they found or felt that there was reasonable caus

to believe that Columbia was in violation of equal pay?

"A No, sir."

Skipping the next question and answer.

Page 9:

"Q Continue with the case please, in chronological sequence."

THE COURT: Mr. Stitt, if on the basis of that last answer you are going to argue that this is an adjudication, obviously I would not admit it for that purpose.

MR. STITT: No, I don't believe I could make that contention, not on that question and answer but I am trying to put together --

THE COURT: That is what Miss Goodman has in effect been urging here and in that respect she's right for the purpose I just mentioned.

MR. STITT: Yes.

"Q Continue with the case please, in chronological sequence.

"A Subsequent to February 1, '73 we decided to resume our investigation and at this point Mr. Bromberg still had the file.

"Q Mr. Bromberg was still in charge of the case?

"A Yes.

"Q Mr. Barish had not been reassigned to it even

though he had returned to your office in June of '72?

"A That's right.

"Q What instructions did you give and on what date following your communication with Mr. Mercurio?"

MR. BERKE: Your Honor, could Mr. Stitt when he skips lines could he indicate that he's skipping?

MR. STITT: I believe I did, your Honor.

THE COURT: All right. Try to do that.

MR. STITT: Yes, sir.

"A The instructions were to resume the investigation."

Continuing over to page 25, line 9:

"Q During the course of your contact with this case, did you learn anything about the use of heavy motor driven equipment within the University Department of Buildings and Grounds?

"A I'm not sure I know what you mean.

"Q For example, I think if you will refer to those equipment lists enclosed with Mr. Nye's letter to Mr. Bromberg of March 8, 1973, under the label of, "Equipment-Janitor,"--

MR. BERKE: Your Honor, I object to this on hearsay. He is asking the Department of Labor's representative to testify to material contained in the University's own self-

serving equipment list. Really bringing in University's contention through the Department of Labor. I think it's hearsay. The paper itself is hearsay.

THE COURT: Let me have that question in its entirety.

MR. STITT: I hadn't finished it, your Honor.

THE COURT: Start it again and let me get to the end of the question before anybody objects.

MR. STITT: Yes, I am trying to jog his recollection.

THE COURT: Start it again, Mr. Stitt.

"Q For example, I think if youwill refer to those equipment lists enclosed with Mr. Nye's letter to Mr. Bromberg of March 8, 1973 under the label, "Equipment-Janitor," do you see the reference, 'Floor polish, machine 17 inches, 90 pounds; 20 inches, 120 pounds; 23 inches, 150 pounds'?

"A I see that.

"Q Does that reference refresh your recollection concerning any information which you have learned about the use of such machines within the University Buildings and Grounds Department?

"A Mr. Stitt, I think our orientation is a little different. We are concerned --

"Q Please answer my question.

"A Will you repeat the question, please.

"(Question read.)

"A I am generally familiar with the hand and mechanical equipment used by maids and porters.

"Q At Columbia University?

"A At Columbia University.

"Q And you know that these machines have different attachments so that they can be used for stripping floors, for example?

"A Yes, sir.

"Q And for waxing and polishing floors?

"A Yes, sir.

"Q And for shampooing carpets?

"A Yes, sir.

"Q Did you learn that janitors or heavy cleaners at Columbia were trained in the use of such equipment?

"A No, sir.

"Q Did you learn of any maid or light cleaner at Columbia who uses such equipment in the performance of his or her duties?

"A I believe we have an indication that maids and some porters use the same equipment and do the same process."

* * * *

* * * * [1710]

"Q Are you referring specifically to these heavy duty motor driven machines we have been talking about?

"A Which heavy motor driven machines?

"Q Referring to the equipment list, floor polishing machines, 17 inches, 90 pounds; 20 inches, 120 pounds; 23 inches, 150 pounds. If your answer is affirmative, Mr. Klainbard, I want the description of the maid and her building and her shift. Please take your time reviewing your file.

"A I take it you are asking does any maid use floor polishing equipment, 17, 20, and 23 inches.

"Q Will you repeat the question.

"(Question read.)

"A The maids in response to your question do not operate the floor polishing machines, 17, 20, and 23 inch."

* * * *

[1714]

(Mr. Stitt and Mr. LImitonc read as follow

"Q Thank you, and you give that answer after careful review of your files?

"A I have read a number of statements. I have not read them all.

"Q You are satisfied with that answer, aren't you?

"A Yes, sir.

"Q Did you learn that janitors and heavy cleaners at Columbia are charged with the duty of moving heavy furniture? I am referring to something in the size of this table, ten feet by three feet or a heavy desk, not just a light chair.

"A I assume they do this.

"Q Did you learn any maids --", I believe the word "of" should be inserted before any, "--or light cleaners at Columbia University who were charged with that task as part of their duties?

'A No, sir."

Continuing down line 24 of that page, skipping several questions and answers.

"Q Did you learn that janitors at Columbia University are charged with the duty of receiving, storing, and using 55-gallon drums of cleaning solvent?

"A I know this only from the equipment list that you have; 'Equipment-Janitor,' and I assume that's so.

"Q Do you have any information that maids or light cleaners are charged with those duties with respect to those drums?

"A No, sir.

"Q Referring to the equipment list we have taken up the motor driven machines. Are you familiar or did you learn that janitors at Columbia University use mopping equipment consisting of two 44 quart pails, a wringer and a dolly; empty these items weigh 60 pounds and filled with cleaning solution 140 pounds? Did that information come to your attention or did you learn it?

"A The information is in the file based on the 'Equipment-Janitor' list supplied by the University, yes, sir.

"Q That is the only information you have concerning that equipment based on those lists?

"A Yes, sir.

"Q Do you have any information to indicate that maids were required to use that type of equipment, namely, those 44-quart pails as part of their duties?

"A I don't know the size of the pails that the maids used.

"Q Do you have any information that they used pails such as 44 quarts?

"A I don't know that, sir.

"Q So the answer is you have no such information?

"A That's right.

"Q Did you learn that janitors at Columbia use mop trucks -- 30-gallon mop trucks, empty 60 pounds, with

solution, 300 pounds, and 60-gallon mop trucks empty 200 pounds and with solution 540 pounds.

"A I am sure some janitors use that equipment.

"Q Do you know if any maids at Columbia use such equipment?

"A No, sir.

"Q Did you learn janitors or heavy cleaners at Columbia use wet-dry vacuum cleaners ranging in weight -- empty, 74 to 96 pounds, and full 122 to 192 pounds?

"A Yes, sir.

"Q Did you learn of any maids who used such equipment of that size and weight?

"A I don't know the size of the vacuum cleaner the maids use but the maids regularly use vacuum cleaners.

"Q Isn't it true that the maids use upright vacuum cleaners of the household type weighing approximately 17 to 27 pounds?

"A I believe that would be generally correct."

Continuing now on page 35, line 16:

"Q Continuing with the subject of garbage and rubbish, did it come to your attention that janitors use trash trucks weighing 200 pounds empty to 350 to 500 pounds full at Columbia University?"

MS. BODIAN: Excuse me, could you give me the -- give page references, Mr. Stitt.

MR. BERKE: I'm sorry, I lost the page.

MR. STITT: I am sorry, I should not have read that colloquy.

MR. BERKE: It just slipped by me.

MR. STITT: Page 35 and I will start all over again, line 16.

"Q Continuing with the subject of garbage and rubbish, did it come to your attention that janitors use trash trucks weighing 200 pounds empty and 350 to 500 pounds full at Columbia University?"

There is colloquy being omitted.

"A On the equipment list, that is so specified.

"Q Do you have any information in your file to indicat that maids and light cleaners were required to use such trash trucks because of their duties?

"A These are mop trucks you speak of I assume?

"Q I am referring to trash trucks which is --

"A I beg your pardon. Yes, you have that.

"Q Do you have any information or any reason to believe that maids at Columbia use such trash trucks as part of their duties, and if so, will you specify the maid by shift and building, and if possible, the date.

"A I have nothing which would indicate that the maids pull trash trucks which weigh empty 200 pounds and full up to 500 pounds.

"Q Referring to the equipment list for janitors, did it come to your attention that janitors at Columbia, as part of their equipment, make use of hand trucks weighing 60 pounds and platform trucks weighing 150 pounds?

"A I do not know that.

"Q Do you find a reference to that in the equipment list which was forwarded with Mr. Nye's letter to Mr. Bromberg on March 8, 1973?

"A Yes, sir. In the equipment list there is hand truck, 60 pounds, platform truck, 150 pounds.

"Q Do you have any information in your file or of your own knowledge indicating that maids and light cleaners at Columbia University are required to use such equipment?

"A Again, we are dealing with platform trucks and hand trucks?

"Q Yes.

"A I have no indication that the maids utilize heavy trucks.

"Q And included in that description is hand trucks and platform trucks that I have just asked you about?

"A Yes, sir.

"Q Did you learn that janitors at Columbia make use of stepladders ranging in height from six to fourteen feet, weighing 21 to 50 pounds?

"A Based on the equipment list, that's right.

"Q Do you find that maids at Columbia make use of such equipment as part of their routine?

"A No, sir."

Page 39, line 6.

The record should show I am skipping perhaps a page and a half.

"Q Did you learn that janitors on occasion are required to work at heights either on ladders or platforms?

"A I assume that's so.

"Q Do you know of any light cleaners at Columbia who are required to work at such heights?

"A I know of no maids who would do this."

* * * *

[1723]

MR. STITT: Now the deposition of the plaintiff by George Barish, pursuant to the same notice, was conducted on July 8, 1974, in this courthouse, the transcript was signed by Mr. Barish before a notary public, on July 29, 1974.

"George Barish, being first duly sworn, was examined and testified as follows:"

* * * *

(Mr. Stitt and Mr. LImitone read as follows:)

"Q Mr. Barish, would you give us your full name and home address, please."

Colloquy is being omitted.

"A George Barish, 545 E. 14th Street, New York, New York, 10009.

"Q How old are you, Mr. Barish?

"A 59.

"Q What is your position with the Department of Labor?

"A I am a Compliance Officer.

"Q And with what office, sir?

"A With the United States Department of Labor, the wage-hour division.

"Q Which office within that division of that department?

"A The Bronx area office."

Continuing on page 4 at line 21.

"Q Did there come a time when you were asked to make an inquiry with regard to Columbia University and the pay of janitors and maids and if I may use the term 'heavy cleaners and light cleaners' also, within the University's Buildings and Grounds Department?

"A I was asked to conduct an examination at the University under the Fair Labor Standards Act and any related acts, yes.

"Q Would that include the Equal Pay Act?

"A Yes, it would.

"Q I am referring to the investigation which brought us into this Court.

"A Yes.

"Q When did that matter first come to your attention?

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Fix a date for us if you can. You may refer to any of the documents that you have before you. I see three files.

"A February 2nd. Let me correct that; January 12, 1972.

"Q Who brought the matter to your attention on that day?

"A My area director.

"Q What was his name?

"A Abraham Klainbard."

Continuing at page 6:

"Q What was your initial step after the matter had been given to your care?

"A An attempt to make anappointment with someone at Columbia to discuss what I was going to do."

Page 10, line 11:

"Q When did you first contact Columbia University, Mr. Barish?

"A January 9, 1972.

"Q Whom did you contact?

"A I spoke with a Mr. Adams.

"Q Was that Robert Adams, the director of personnel?

"A He was the director.

"Q Was this an oral communication you had with Mr. Adams by telephone?

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"A No, this was sitting with him in his office.

"Q Do you recall your conversation with Mr. Adams on that date?

"A We talked about what type of an examination I was going to do.

"Q Well, tell us what you said and tell us what Mr. Adams said.

"A I think I told him, I told him I was going to do an examination under the Fair Labor Standards Act. I told him that it would be a wage-hour examination and an examination under the Equal Pay Provisions of the act itself.

"Q Did you specify any particular division or part of the University?

"A No, I said I would be doing a general examination as we normally do.

"Q Did you find Mr. Adams cooperative?

"A Yes.

" "Q Did you ask him to meet with you again and make any information available to you?

"A I asked him for certain information which he did not have, and he said he would put it together for me, and at which time we would meet again and I would continue with the examination.

"Q What information was that, can you tell us? You

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may refer throughout this deposition to your records, Mr. Barish.

"A Thank you.

I asked him to make available to me the last available payroll, actual payroll that he had for all of his employees, excluding the teaching staff.

"Q Of the entire University?

"A That's right.

I also asked him to make available to me a complete list of his maintenance employees by name, salary, and the nature of the position they were employed in, and if possible, a copy of the union contract which they had with these employees.

"Q Did you specify any particular department with regard to these maintenance employees?

"A No."

Continuing down line 20.

"Q What did you do after your initial conference with Mr. Adams on January 29th?

"A I left.

"Q Did you meet with him again?

"A Yes, I met with him on February 3, 1972.

"Q Was that in his office at the University?

"A Yes, all meetings were in his office or in

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someone's office.

"Q Was anyone else present at the second meeting with Mr. Adams?

"A No.

"Q Had anybody been present at the initial meeting on January 29th?

"A No.

"Q Can you tell us what was said at your second meeting with Mr. Adams?

"A Well, at that time I looked at a payroll record which was made available. Nothing was said other than what I was doing, and what I was looking at.

"Q What did this payroll record encompass, I take it more than one piece ofpaper?

"A Computer type sheet as I remember it, name, salary, deductions, a normal payroll.

"Q Do you recall the groups of employees this record pertained to?

"A Clericals, administrative, maintenance, everyone.

"Q And for more than one division of the University, did it include more than one school, for example?

"A I don't know.

"Q What else happened at your second meeting, Mr. Adams?

"A I talked with a couple of clerical people.

"Q Do you have their names, Mr. Barish?

"A No. These were oral interviews. A few questions to verify the accuracy of the records.

"Q These were bookkeeping type persons at the University?

"A Clericals, if you can put bookkeeping in there.

"Q Did you request any further information of Mr. Adams at that time?

"A I was waiting at that time for a list of maintenance employees which I did not have as yet. And I did not request anything else.

"Q What did you do after your second meeting with Mr. Adams?

"A I left after I conducted these few interviews. Since the last of the maintenance people was not available at that time, I couldn't pursue it.

"Q What did you do after February 3rd?

"A On February 16th I returned and Mr. Adams had a complete list of all his maintenance people and I reviewed this with him, who was what, what employees did what, etc., day employees, night employees; to find out exactly what I

was looking at."

Continuing at page 16, line 6.

"Q Do you recall what was said at this third meeting at Mr. Adams' office?

"A We went into wage rates of various maintenance employees.

"Q Which particular positions?

"A Maids, porters.

"Q By porters do you mean janitors?

"A Janitors.

"Q Any others that you can recall,other types of female personnel other than straight cleaning personnel, attendants, for example?

"A Possibly, yes."

THE COURT: Mr. Stitt, do we have to go into the Secretary's inquiry? If itis, I don't see the relevance.

MR. STITT: Your Honor, let me turn forward to page 30, line 12.

"Q How many of the male cleaners or heavy cleaners are janitors?

"A Just about every male cleaner who had been interviewed.

"Q How many had you interviewed?"

MR. BERKE: May it please the Court, I would just

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like to point out that -- draw attention to that -- the way in which the investigation was conducted, was the interviewing of employees and so the information which is going to be coming in, as I said before, is hearsay from the employees.

THE COURT: All right.

(Mr. Stitt and Mr. Limitone read as follows:)

"Q And how many maids or light cleaners did you interview?

"A 12.

"Q Would you give us the buildings of the heavy cleaners from whom you obtained interviews? You have given us Mudd and, I believe, Havemeyer.

"A Butler.

"Q Are these the males now?

"A Yes. Butler, Black, Havemeyer again, Miles Cooper. That's about all the buildings I have written down.

"Q What about the females you interviewed? What buildings did they work in?

"A Butler, Hamilton -- I am sorry, Butler again and Hamilton, Butler, and the library, or --

"Q Butler Library?

"A Yes, Butler Library, Butler, S.I.A., Journalism Building, Kent, that's about all I have.

"Q Do you remember files containing references to

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interviews conducted by any other investigators of your department?

"A Yes, Mr. Bromberg.

"Q Are they included in those that you just mentioned to us?

"A Yes.

"Q So we have got them all.

"A We have all that we have so indicated. There may be some who worked in other buildings where we didn't put the building down.

"Q But you have given us the total number and --

"A Yes, the ones that I have an indicated building for.

"Q Now, I want to ask you briefly some information about the duties, equipment, and areas assigned of maids and janitors within the Buildings and Grounds Department now known as light cleaners and heavy cleaners.

First of all with respect to duties, did you learn during the course of your interview that janitors or heavy cleaners operated any motor driven equipment?

"A Yes."

MR. BERKE: Again, may it please the Court --

THE COURT: You have a continuing objection, Mr. Berke, all the way through.

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MBpa 121 "Barish"

(Mr. Stitt and Mr. Limitone read as follows:)

"Q Could you describe that equipment for us, please.

"A Buffing machine or waxing machine.

"Q Are these machines used for multiple purposes -- that is, waxing, floor stripping, carpet shampooing?

"A They are used for waxing and they are used for buffing. I don't know about the other two."

Continuing over page 33, line 10.

"Q Did you learn of any maids, or lightcleaners who used such motor driven equipment during the course of their duties at Columbia?

"A I did not."

Continuing bottom of page 36, line 24.

"Q Did you learn the heavy cleaners at Columbia are required to move heavy rubbish and garbage as part of their duties?

"A I am trying to determine what you mean by heavy. I learned that janitors had to carry waste bags -- plastic bags which were filled with scraps, etc., and so forth, from floors down to the basement.

"Q And then push them out of the basement onto a truck?

"A Some, yes.

"Q Did you learn of any light cleaners who were required to take the heavy garbage down to the basement and

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push it outside on the truck?

"A I learned that females carried the heavy trash bags out to the elevator.

"Q Did you learn how much those trash bags weighed, as carried by the maids or light cleaners?

"A 10 to 20 pounds."

Page 38, line 11:

"Q Did you learn during your investigation of any light cleaners or maids who received, stored, or used such 55-gallon drums?

"A No, I did not.

"Q Did you learn during the course of your investigation what mopping equipment was used by the janitors or heavy cleaners as part of their duties? Again, of course, refer to your records if that may refresh your recollection.

"A Yes, I did.

"Q Can you tell us what the mopping equipment as used by the heavy cleaners included?

"A 32-ounce mop and a bucket with soapy water and a bucket with rinse water."

Continuing over at page 39, line 7:

"Q Did you learn of any light cleaners who made use of such equipment consisting of two 44-quart pails, a wringer,

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and a dolly?

"A No, I did not.

"Q Did you learn of any light cleaners who made use of a single 44-quart pail with coasters and a wringer?

"A No.

"Q Did you learn of any light cleaners who made use of a 30-gallon mop truck?

"A No.

"Q Did you learn of any light cleaners who made use of a 60-gallon mop truck?

"A No."

Continuing at page 41 at the top:

"Q Did you learn that janitors used hand trucks as part of their duties at Columbia?

"A Yes.

"Q And did you learn of any light cleaners or maids who used such hand trucks -- 60 pounds approximately?

"A I learned of maids using hand trucks. The weight is beyond me.

"Q Would that be a Waste-mobile -- a trash collection cart -- weighing from 10 pounds empty to 25 pounds full?

"A It would be that or a wagon containing various cleaning equipment on it.

"Q Were you aware of any janitors who made use of the

platform trucks weighing approximately 150 pounds as part of their duties?

"A No.

"Q Were you aware of any light cleaners who made use of such platform trucks as part of their duties?

"A No.

"Q Were you aware of janitors at Columbia who, as part of their duties, used stepladders?

"A Yes."

Continuing page 42, line 6:

"Q Are you aware of any light cleaners who made use of such ladders, such stepladders as part of their duties at Columbia?

"A No, I am not."

Continuing page 45, line 22:

"Q Did you learn that janitors or heavy cleaners at Columbia as part of their duties worked on stepladders or scaffolds or platforms?

"A Ladders, yes.

"Q Platforms?

"A No, I didn't hear of any platforms or scaffolds.

"Q Did you learn of any light cleaners or maids who are called upon to work on ladders?

"A I did not.

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"Q Or platforms or scaffolds?

"A No, sir.

"Q At heights?

"A No."

Continuing at the bottom of page 47, line 24.

"Q During the course of your investigation, Mr. Barish, did you learn that a group of women formerly employed in the maid or light cleaner category commenced training as heavy cleaners in 1972? Specifically, that would have been on or about August 29, 1972.

"A I did learn from Mr. Adams that they were posting jobs without designating whether they were for -- they were cleaning jobs, but without designating male or female cleaning jobs on the bulletin board.

"Q And you learned that in February 1972?

"A When I met with Mr. Adams, yes."

* * * *

MR. STITT: Deposition of the plaintiff by

Norman Bromberg, taken pursuant to the same notice, July 8, 1974, 2:00 p.m., the transcript was signed by Mr. Bromberg before a notary public on August 1, 1974. The appearances have been the same all the way through, your Honor, as indicated earlier.

(Mr. Stitt and Mr. Limitone read as follows:)

"Norman Bromberg, having been duly sworn, testified as follows:"

Eliminating colloquy, continuing at page 6, line 8:

"Q Mr. Bromberg, will you give your full name and address to the court reporter.

"A Is that my home address, Mr. Stitt?

"Q Please.

"A The name is Norman Bromberg, 321 W. 24th Street, New York City.

"Q How old are you, Mr. Bromberg?

"A 46.

"Q What is your position with the Department of Labor?

"A I am now area director.

"Q Which area?

"A New York area.

"Q What is your office?

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"A Manhattan Office, 26 Federal Plaza.

"Q How long have you held that position?

"A Since March of 1974.

"Q How long have you been with the Department of Labor?

"A Since July of 1960."

Continuing line 12, page 7.

"Q At one time, were you associated with the Bronx office?

"A That's correct.

"Q When was that?

"A I would say approximately from January of 1970 until July of 1973.

"Q What were your positions with the Bronx office during this period?

"A I was a compliance officer and later on an assistant area director.

"Q When did you become an assistant area director?

"A Approximately July of 1971.

"Q While you were at the Bronx office, did a complaint or matter come to your attention which ultimately led to the lawsuit which we are all involved in this morning?

"A I received a case file called "Columbia University"

to make an investigation.

"Q Who gave you this case file and when?

"A The case file was given to me by the area director, Mr. Abraham Klainbard.

"Q Will you tell us when Mr. Klainbard first brought this case to your attention?

"A The case was assigned to me on April 3, 1972.

"Q Had this case previously been assigned to anyone else?

"A Yes, it had.

"Q That was to Mr. Barish?

"A That's correct.

"Q Do you have any folders before you which you quite properly may use to refer to to refresh your recollection during this examination?

"A Yes, I do.

"MR. STITT: May the record show those are the same folders and the same material that Mr. Barish had before him yesterday.

"MR. GORIN: That's correct."

Continuing over to page 39, line 12, skipping some 30 pages.

"Q Did you learn that janitors on occasion were called on to move heavy furniture, large desks or heavy

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tables like the one we are sitting at, which is maybe ten feet by three feet.

"A Let me understand what you are asking me sir.

Are you asking did I learn whether any of the heavy cleaners moved heavy objects on occasion?

"Q As part of their duties, yes.

"A Yes, sir.

"Q Did you learn of any light cleaners or maids who, as part of their duties, were required to move such heavy objects along the lines that I just mentioned?

"A Yes, sir.

"Q How many and where and give us the weight of the object if you can.

"A I found that approximately six females used vacuum cleaners which weighed approximately 25 pounds.

"Q And those are the only items you were able to find for the question I put to you?

"A Yes.

"Q And after reviewing your file for about five minutes?

"A Yes, sir."

Page 43, line 12:

"Q Did you learn during the course of your inquiry, and you may have the job description in front of you next to

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Mr. Nye's affidavit, whether janitors as part of their duties received, stored, and used 55-gallon drums containing solvents?

"A Yes, sir.

"Q Did you learn of any maids or light cleaners who were charged with that responsibility?

"A No."

Continuing page 44 at the top.

"Q Did you learn that janitors as part of their duties used mopping equipment consisting for example of two 44-quart pails, a wringer, and a dolly?

"A I believe that was part of the testimony provided by Mr.Nye and Mr. Ackroff's testimony.

"Q Did you make any further investigation with regard to that subject?

"A As to the weight of mops?

"Q As to whether or not janitors' mopping equipment consisted of two 40-quart pails, a wringer, and a dolly.

"A I have a description of the type of pail used but no references to weight.

"Q For example, did you learn that such equipment weighs empty 60 pounds and the cleaning solution weighs 140 pounds?

"A No, sir.

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"Q Did you learn of any maids or light cleaners who used such equipment as part of their duties?

"A No.

"Q Did you learn that janitors as part of their duties used mop trucks ranging from a 30-gallon mop truck, 160 pounds empty, 300 pounds with solution, to 60 gallons, 200 pounds empty and 540 pounds with solution?

"A I don't recall those figures at all, although I have a general recollection of again testimony by Mr. Ackroff with reference to trucks.

"Q Did you learn of any maids or light cleaners who made use of such mop trucks as I have just described as part of their duties?

"A No, sir, I did not.

"Q I believe you mentioned before maids did use and were called upon to lift on occasion a vacuum cleaner.

"A Yes.

"Q Would this be an upright household type ranging from say 17 to 27 pounds?

"A Upright vacuum cleaner approximately weighing 25 pounds.

"Q Did you learn that janitors as part of their

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duties at Columbia used wet-dry vacuum cleaners ranging from 74 to 96 pounds empty to 120 to 192 pounds full?

"A The vacuum cleaner on wheels?

"Q The wet-dry vacuum cleaners.

"A I believe they are the ones on the wheels, yes.

"Q Do you know of any maids or light cleaners who made use of that equipment I just described?

"A No, sir, I don't."

Skipping a few lines down to line 16 at page 46:

"Q Did it come to your attention that janitors at Columbia used stepladders as part of their duties?

"A Yes, sir.

"Q Were those stepladders approximately six feet to fourteen feet weighing say 14 to 22 pounds?

"A I have no idea how high they were or what they weighed.

"Q Do you know if any maids or light cleaners during your investigation revealed whether maids or light cleaners were required to use such ladders as part of their duties?

"A Yes, sir.

"Q How many and where?

"A I came across one who stated in an affidavit that she uses a ladder to replace overhead lights which are

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MBpa 133 "Blumberg" [1745]

burned out.

"Q In what building?

"A Black Building at P & S.

"Q Did you learn any other maids that --"

P & S, your Honor, would be the College of Physicians and Surgeons up at Washington Heights.

"Q Did you learn of any other maids who on occasion used a ladder?

"A Not to my recollection.

"Q And you have reviewed your entire file both now and before coming to this deposition?

"A Yes, I have."

" Page 29, line 9:

"Q Did you during the course of your investigation learn of any maids or light cleaners who as part of their duties at Columbia were required to clean and sanitize large public lavatories,"is the question,"excluding one-holers in the Dean's Office or Library stacks?

"A The answer will have to be no."

* * * *

[1749]

J O S E P H N Y E , called as a witness by defendant Columbia, having first been duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. STITT:

Q How old are you, Mr. Nye?

A 62.

Q Would you give us a statement of your educational background and experience?

A Graduate of Northwestern University.

Q When was that, Mr. Nye?

A 1933.

Q And your degree?

A Bachelor of Arts.

Q Continue.

A As far as education is concerned? I have had no further education.

Q What about your business experience beginning with your graduation from Northwestern.

A Following graduation, I worked briefly for Commonwealth Edison Company, Household Finance, both for short periods.

Thereafter I went with the Texas Company, refinery, Lockport, Illinois, following which I returned to Evanston, Illinois, where I worked in a restaurant by the name of Coolie's Cupboards where I stayed until 1939 when I came into Columbia University.

Q And would you tell us the positions you have held at Columbia beginning in 1939? Give us the inclusive periods by years of each position, and a brief

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description of the duties with respect to each position.

A My timing will have to be a little approximate in the early years, but I began as manager of one of the dining rooms in the University known as John Jay Dining Room. Sometime thereafter, I was put in charge, I would say a matter of three or four years, put in charge of all of the dining rooms within the Residence Hall system; and in perhaps another five years I became assistant director of Residence Halls.

I would guess in the late 1940's or perhaps 1950 I became director of Residence Halls, and approximately 1965 I became business manager of the University.

Q What were your duties as business manager of the University?

A Assistant to the vice-president for business under whose jurisdiction we had approximately six or seven operating divisions of the University.

Q Did this include the residence halls?

A Yes.

Q And did it include the Buildings and Grounds Department?

A Correct.

Q During your position as business manager, did you have any duties or responsibilities involving the

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negotiation of union contracts?

A I did.

Q Could you tell us what those duties and responsibilities were?

A Well, I have been participating in union negotiations for almost the entire length of time that I had been at the University, with particular emphasis on the residence halls when I represented that division. But in 1965, I assumed the general role, if you will, of chief negotiator because the personnel department was also in the division of business affairs, and this work was assigned to me.

Q In 1971, did you become vice-president for business?

A Yes, I did.

Q And is that your present title at the University?

A It is.

Q What is your responsibility as vice-president for business?

A At the present time, it consists of jurisdiction of the residence halls, Department of Buildings and Grounds, new construction, campus architect, purchasing, and liaison with the book store. We don't operate the latter any more. It's under a contract but we maintain a watchful

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supervision over it.

Q When you assumed the position of vice-president for business, did you continue to be involved in any way with regard to the negotiation of union contracts?

A Yes, I continued as chief negotiator until the current year.

Q That would be 1974?

A Yes.

Q With what unions did you negotiate, Mr. Nye?

A Well, I guess our longest association has been with the Transport Workers Union Local 241. We also have negotiated contracts with Local 1199, Drug and Hospital Workers there is an independent union at Medical Center known as Supporting Staff Association, and we have three contracts with the Seafarers' Union at one of our outlying campus locations. Excuse me, we also now have a doctor's association at Harlem Hospital that's organized.

Q Which local of Transport Workers Union do you deal with?

A 241.

Q Has the International Union also been involved in negotiations of TWU contracts?

A Yes. Normally represented by one of the international officers.

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Q Who has that been in recent years?

A Joseph Hanaberry.

Q Could you spell his name for the reporter, please?

A H-a-n-a-b-e-r-r-y.

Q Has there been any connection between TWU if I may use that in the overall sense, and the Buildings and Grounds and Residence Halls employees?

A I am sorry, I didn't hear the first part of that.

MR. STITT: Will you repeat the question to the witness.

(Question read.)

A Yes, they are part of the -- the Residence Halls and food service is part of the same bargaining unit with the Buildings and Grounds employees, hourly employees.

Q And the Transport Workers Union is their bargaining agent?

A That's correct.

Q Starting when did the transport workers union assume that function for those employees?

A Approximately 30 years.

Q That would take us back to mid 1940's?

A Early 1940's.

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Q What employee groups or job classifications would be represented by the TWU in connection with negotiating contracts with the University?

A Well, they consist I think, I'd say primarily in three sections. One, the Powerhouse group; two, the mechanical trades; three, custodial; possibly a fourth of a miscellaneous nature including grounds men, truck drivers, that sort of thing.

Q Would it also include the categories that we have been involved with in this lawsuit, maids and janitors now known as light cleaners and heavy cleaners?

A Yes.

Q How often are these contracts negotiated or re-negotiated, Mr. Nye?

A Well, It's varied from time to time but for the most part, these contracts have been for two years.

MR. STITT: Your Honor, Miss Rodenhausen has been kind enough to give me the 1968 agreement between the University and TWU. I should think it would be now received or has been.

Q Mr. Nye, I place before you Exhibit 105. Can you identify that document for us?

A Yes, sir.

Q What is it?

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A It's the union contract dated July 1, 1968 between Columbia University and Transport Workers Union, Local 241.

Q Was that contract negotiated for a period of years?

A It was negotiated for a period of two years.

Q So it would go through June 30, 1970?

A That's correct.

Q Can you tell us either from your own recollection or if not by referring to that document, the wage rate for janitors and maids which I believe the terms were then used as of the last six months of that contract?

A The hourly wage for janitor was $2.51 a hour, and for maids $2.06 an hour.

Q Mr. Nye, there has been testimony in this case concerning the use of floor machines at Columbia University. Were they in use as of 1967?

A Yes.

Q What group of employees use floor machines?

A Janitors.

Q Did they receive any additional bonus for using such floor machines pursuant to that 1968 contract?

A No.

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MR. STITT: Mark these documents for identification as University exhibits next in order, separately, please.

(Defendant University Exhibit S marked for identification.)

Q Mr. Nye, I am going to show you a xerox copy of a document which has been marked University's Exhibit S for identification. Would you examine that document and if you can, tell us what it is, please.

A This is a job description and qualifications for the position of janitor as outlined by the Department of Buildings and Grounds, signed by Mr. John Gardner and dated November 6, 1969.

Q How long have you known Mr. Gardner?

A Oh, 20 to 25 years. As long as he's been there. I am not sure of his length of service.

Q Over the period of years have you seen his signatur on occasions?

A Oh, yes.

Q And do you recognize his signature on that document?

A Yes, sir.

Q When did this document first come to your attention, if at all?

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A I can't be sure of the exact date, but I would venture to say sometime in 1970, possibly 1971.

Q That would be in the course of your duties at Columbia University?

A Yes. Especially after I became vice-president. I spent a little less time with B & G prior to that.

Q I am going to show you a similar xerox copy. This has been marked University Exhibit T for identification. Would you tell us what that is, please.

A This is a job description and qualifications for the position of maid as outlined by the Department of Buildings and Grounds dated November 6, 1969, also carrying the signature or copy of the signature of Mr. John Gardner.

Q Do you recognize that signature?

A Yes, sir.

Q Did there come a time when this document came to your attention?

A Yes, sir.

Q When was that, Mr. Nye?

A I would say also in 1970 or possibly 1971.

Q Does that also bear the same date as Exhibit S for identification November 6, 1969?

A Same date.

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* * * *

Q Now, Mr. Nye, as of the date of Exhibit S, November 6, 1969, had you observed anyone at the University

operating heavy motor driven cleaning equipment?

A Yes, sir.

Q Could you tell us where and who?

A Well, the persons doing the work were janitors. I observed them for many, many years in the residence halls while that was part of my chief responsibility. Possibly before 1965 I saw some of the Buildings and Grounds employees but after that time I did see janitors of B & G as we know the department, using such equipment.

Q As you did back in 1965?

A Yes.

Q As of November 6, 1969, had you observed any employees at Columbia stripping floors?

A Yes.

Q Who and where?

A Janitors from both Buildings and Grounds and Residence Halls.

Q As of November 6, 1969, had you observed any employees at Columbia wet-mopping floors?

A Yes.

Q Who?

A I have observed janitors from both Buildings and Grounds and Residence Halls.

Q As of this date, November 6, 1969, have you

observed anyone at Columbia wash walls, glass partitions, and blackboards?

A I am not sure that I ever saw them wash blackboards but the answer is yes to the other question -- other part of the question.

Q To wash walls and glass partitions?

A Yes.

Q Who had you observed doing that work?

A Janitors.

Q As of this date, have you observed any employees at Columbia moving furniture while rooms were being cleaned?

A Yes.

Q Who, Mr. Nye?

A Janitors.

Q As of this time, had you observed anyone at Columbia hosing sidewalks?

A Yes.

Q Who?

A Janitors, primarily in the Residence Halls, as well as off campus locations.

MS. LIBOW: Your Honor, could we have the witness specify more clearly when this was, when these observations were made or where?

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THE COURT: If you like. Of course all of this you know you can make notes and cross examine.

MS. LIBOW: I understand that, your Honor, but Mr. Stitt made that same request with regard to the testimony.

MR. STITT: I am making all these questions I am putting as of November 6, 1969.

THE COURT: I see.

Q Mr. Nye, if you can expand please feel free to do so.

As of this date have you observed any employees of the University shoveling snow on the front stoops and entranceways?

A Yes.

Q Who, Mr. Nye, and where?

A Grounds men and janitors.

Q With regard to what buildings?

A In the case of the janitors, primarily in the Residence Halls area, and again either on the stoops of academic buildings or in larger areas in off campus buildings being used for academic purposes.

Q And as of this date had you observed any employees of the University removing heavy rubbish?

A Yes.

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Q Who and where?

A Janitors and I'd say over the period of my course of duties, probably every building on campus and off campus.

Q As of this date have you observed any employees of Columbia changing lightbulbs and fluorescent tubes?

A Yes.

Q Who, Mr. Nye?

A Janitors and in some instances electricians.

Q And have you observed them use any particular equipment in that duty?

A Where circumstances warranted, because of the physical dimensions of the area, other ladders have had to be used or where possible, I have had equipment which could -- extended poles, if you will, that could remove and replace bulbs.

Q In what sort of buildings have you observed this work going on with these ladders or these poles?

A I have seen them use ladders in residence halls and lounges. Such buildings as law school, S.I.A. as described before; the chief administrative building, Low Library; Butler Library; and I am sure there are many others.

Q As of this date, have you observed -- had you observed any employees at Columbia turning on and off

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ventilation equipment?

A I can't say that I actually have.

Q As of this date have you observed any employees of Columbia dusting and waxing?

A Dusting and waxing?

Q I will take them one at a time if you will.

A I have seen employees dusting; yes.

Q What employees have you seen dusting?

A Light cleaners as they are now known, formerly called maids, and I have seen janitors dusting.

Q What about waxing as of this date, November 6, 1969?

A Well, I have seen janitors waxing floors. I have seen maids or light cleaners polish or wax furniture.

Q Is there any difference in those two observations? With regard to technique.

A Well, one requires motor driven equipment, the floor work. The other does not.

Q That would be the janitors?

A Yes.

Q What about spot removal of carpeting or shampooing of carpeting?

A Shampooing of carpeting I have seen many an occasion as performed with machine driven equipment by janitor

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Q And is that also true of recent years as well as 1969?

A Yes.

Q What about washroom and toilet cleaning?

A I'm sorry?

Q Washroom and toilet cleaning.

As of November 6, 1969.

A Washroom and toilet cleaning for the most part is done by janitors.

MR. BERKE: Objection, I move to strike that answer . Have you observed is the question.

MR. STITT: If your Honor please, it's right in the middle of the answer.

THE COURT: Let him finish his answer, Mr. Berke.

A What was I saying?

Q Would you read back the part of the answer before the interruption, Mr. Reporter?

THE COURT: Yes, Mr. Birnbaum.

(Last question and answer read.)

A I am referring in that instance to what might best be described as the public washrooms throughout the academic buildings as well as the washrooms and toilets for the buildings known generally as men's residence halls.

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The washrooms and toilets --

Q Continue, Mr. Nye.

A Our women's residence halls were washed at that time or cleaned at that time and still are by a category now known as heavy cleaners, what one time were known as shower maids. We also have some small or individual bathrooms interspersed throughout the campus which could be cleaned, and I have observed being cleaned, by either maids or janitors, as they were then known.

Q MS. LIBOW: Your Honor, I would move to strike the witness' answer with regard to anything that was stated without a clear statement that it was his own observatio

THE COURT: I assume, Mr. Nye, that that is what you are testifying to here, correct?

A I think I have observed all that, yes.

Q With respect to these small johns or single commodes, would that include, for example, any located in Butler Library?

A Yes, that's correct.

Q Whereabouts in Butler, Mr. Nye?

A I can't tell you specifically but up in the upper floors.

Q Would this be in the stack areas?

A Yes.

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Q You mentioned this category of maids, showers. What were they being paid as of the 1968 union agreement that is before you?

A At that time they were being paid the prevailing rate for janitors in accordance with the union agreement.

Q To your knowledge, how long had they been receivin that janitor rate as opposed to a maid rate?

A To my knowledge as long as I have had any responsibility for the Residence Halls Department.

MR. BERKE: Move to strike that answer on the grounds that it's a matter of record as to what the rate was in the contracts.

THE COURT: What is the question?

(Question read.)

THE COURT: Overruled.

Q Going back how far, to your knowledge, Mr. Nye?

A Say in the mid 1940's.

Q Was their maids shower position a permanent or regular position or was it part-time?

A Well, it was a permanent position. It also could be described as part-time inasmuch as whoever might be filling in for vacation or relief of some other sort and who

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therefore would be working in that capacity on a part-time basis, might be considered part-time for that work.

Q Well --

A There would be somebody also assigned to the work and regularly working on it.

Q Is it true that maids were paid the janitor's pay on a spot basis or volunteer basis at this time within the residence halls?

MR. BERKE: Objection to the leading question.

THE COURT: Overruled.

Go ahead.

A The answer is yes.

Q During what period, to your knowledge, Mr. Nye?

A Say going back as far as the late 1940's during the summer session periods, and more recently in, I'd say the last two or three years, at intervals during the regular academic year.

MR. STITT: May this group of documents be marked perhaps as a group just for identification.

MS. LIBOW: May we see those documents as soon as they are marked?

THE COURT: Not at this point.

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MS. LIBOW: Your Honor, you had stated that as to documents being used by Mr. Stitt on cross that we couldn't interrupt but Mr. Stitt was shown documents when they were introduced on direct as they were being introduced.

THE COURT: This hasn't been introduced yet.

MS. LIBOW: I would request that the same thing be done with regard to plaintiffs.

THE COURT: This has not been done yet.

(Defendant University Exhibit U marked for identification.)

Q I show you a batch of documents --

MS. LIBOW: May we see it now that it's been marked, your Honor?

THE COURT: No.

Q Mr. Nye, I am going to show you a batch of documents, perhaps half to three-quarters of an inch thick, marked collectively University Exhibit U for identification. Can you tell us what these documents are?

A These appear to be copies of weekly payroll records for the Residence Halls Department, men's residence halls, ranging in date from August 3, 1970 to August 5, 1974.

Q Do you recognize the form of those records?

A Yes, sir.

Q Do you recognize any of the signatures on those

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records?

A I do.

Q Which ones, Mr. Nye?

A The predominant one is Mr. Ed Rode, who is the manager of Maintenance, I believe his title is, in the Residence Halls. One of the other signatures is Mr. Schwartz, Harris Schwartz, who is director of Residence Halls. I believe that covers the vast majority of these.

Q Do you find any reference in those documents concerning the pay of maids at the janitor rate instead of the maid rate or light cleaners at the heavy cleaner rate instead of light cleaner rate?

A It would take me quite a bit of time to look through.

THE COURT: Mr. Stitt, these exhibits speak for themselves, do they not?

MR. STITT: Yes, your Honor.

THE COURT: I presume they are admissible as records kept in the regular course of business by Columbia, would they not?

MR. STITT: Yes, and I would offer Exhibit U for identification to go with a four-page list headed, "Light Cleaners Paid as Heavy Cleaners," prepared

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at my request by the Residence Halls Department of the University and I would state that these are the records, the payroll records and the schedule that I referred to in my meeting with Ms. Rodenhausen on October 9th and I would ask that they be received.

THE COURT: Let me say this, gentlemen, and ladies of the plaintiffs' tables, obviously Mr. Nye has not testified that these are kept in the regular course of business. I assume he would if it were put to him. Is there any question as to this and can we admit this in evidence or do you insist upon a foundation?

MR. STITT: Are these payroll records--

THE COURT: No, Mr. Stitt.

MR. STITT: I am sorry, your Honor.

MR. BERKE: Your Honor, the Secretary has no objection to them being admitted as records in the ordinary course of business as to Exhibit U.

THE COURT: The other is a schedule purporting to be drawn from there and either is or is not as an aid to the Court only, and is not independent evidence.

MR. BERKE: That's correct.

As to relevance and materiality we object.

THE COURT: All right, plaintiffs Walker, any objection?

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MS. LIBOW: As to relevance as well, your Honor, and as to the second exhibit.

THE COURT: Mr. Dryfoos, you may see it.

MS. LIBOW: Our objection to the second is that it's argument and that's not a business record.

THE COURT: This is -- I am receiving this on the same basis that I have received certain schedules of yours.

MS. LIBOW: As argument.

THE COURT: Right. This is a schedule drawn from exhibits which are properly in evidence.

THE COURT: Mr. Dryfoos, I take it you have no objection?

MR. DRYFOOS: I object as to relevance but as to authenticity --

THE COURT: All right. it may be received.

(Defendant University Exhibit U received in evidence.)

Q Now, Mr. Nye, as of November 6, 1969, had you observed any employees of the University receiving, storing or handling 55-gallon drums?

A Yes.

MR. BERKE: Objection, your Honor, and move to strike.

Q Where, Mr. Nye, and when, if you can tell us.

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MBpa 163 Nye-direct [1775]

THE COURT: Overruled.

A In the residence halls, in a building known as Central Stores, which ison campus, as well as a good many of the academic buildings.

* * * *

Q Mr. Nye,now referring to Exhibit T for identificati as of November 6, 1969, had you observed any employees of the University sweeping?

A I am not sure of Exhibit T.

Q As of that date have you observed --

A Excuse me, I don't know what Exhibit T is.

Q Exhibit T.

A May I see it?

(Mr. Stitt hands to witness.)

MS. GOODMAN: Your Honor, I am sorry,we object to his showing the witness this. This is for identification. I don't understand the purpose of having him read from a piece of paper that is marked for identification. Why can't he just ask the question?

Q As of November 6, 1969 --

THE COURT: I think this was to establish a date, is that what the purpose was?

MR. STITT: I will withdraw the question.

THE COURT: All right.

Q As of November 6, 1969, have you observed any maid now known as light cleaners in the performance of their duties at the University?

A Yes.

Q What did you observe them doing?

MR. BERKE: Objection, your Honor. I think that the similar question asked as to particular duties has been allowed on the direct case of the plaintiffs but asked open-ended, "What did you observe them doing," as to time and place --

THE COURT: Are we talking about November 6, 1969?

MR. STITT: That's right, your Honor, the authenticity of the University's job descriptions, Exhibits S and T for identification has been questioned by my adversaries, and while I do expect to call Mr. Gardner, I suggest that I may also and support these documents through Mr. Nye.

THE COURT: You may subject to connection.

MS. GOODMAN: Are we then led to believe that what Mr. Nye is being asked is that on November 9th did he see --

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THE COURT: On or about that time.

MS. GOODMAN: On or about that time. It's not any time from November 9th on.

THE COURT: The objections are collectively overruled. Go ahead.

A During the course of my normal duties at that time, I have observed the maids sweeping, dusting, emptying wastebaskets, polishing furniture.

Q Have you seen them vacuuming?

A Yes, I have.

Q Whereabouts, Mr.Nye?

A In those offices or other public areas where there was carpeting; both in academic buildings as well as residence halls.

Q What sort of vacuums were they using when you observed them as of November 6, 1969?

A Most of them were using an upright vacuum cleaner.

Q Have you observed them doing any wall cleaning as of that date?

A Not that I can recall specifically.

Q Mr. Nye, was there a newunion contract negotiated in or about 1970?

A Yes, a new one was negotiated that became

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effective for the most part as of July 1, 1970.

Q During what time during that year did the negotiations go on?

A They normally begin 60 days prior to the expiration of the previous contract.

Q I place before you a copy of the 1970 union agreement which has been received in evidence as Exhibit 104 although this one bears a different marking. Can you tell us, Mr.Nye, and you may refresh your recollection as to date, when that contract was executed?

A This agreement became effective July 1, 1970 and would be an extension or a modification of the existing agreement with the Transport Workers Union Local 241.

It was actually signed on the 25th of November, 1970.

Q Did you participate in negotiations which led to the execution of that contract?

A I did.

Q Can you tell us who was on the University negotiating team besides yourself?

A I believe it consisted of Mr. Gardner, Mr. Harris Schwartz, Mr. Robert Adams, Mrs. Barber and myself principally.

Q Is there a Mr. McKeever who has been associated

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with the University?

A Yes, he was associated with us for a short time in the personnel department. He may well have been in attendance as well.

Q You have no independent recollection of whether he was or not?

A Yes, if he was at the University at that time he would have been there.

Q Is it customary to prepare a list of the University's negotiating team at the time of these negotiations?

A It is customary, yes.

(Defendant University Exhibit V marked for identification.)

Q I show you University Ezhibit V for identification and I ask you to examine it and if you can, tell us whatit is, please.

A This is a list of the persons representing Columbia University who participated in the contract negotiations with TWU during the summer of 1970. It indicates their names, titles and home addresses.

MR. STITT: Your Honor, I offer University Exhibit V in evidence.

MR. BERKE: Your Honor, I have no reason to

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doubt its authenticity.

THE COURT: Any objection?

MR. BERKE: I object on relevance and materiality.

THE COURT: All right, plaintiffs Walker, any objection?

MR. DRYFOOS: Clearly has no relevance, your Honor.

MS. LIBOW: We object only as to its relevance, your Honor.

THE COURT: It may be received.

*** (Defendant University Exhibit V received in evidence.)

Q Mr. Nye, I call attention to Exhibit V which has now been received, University's 1970 negotiation team. Mrs. May Barber now Mrs. S. Beach, Associate Director of Personnel.

I ask you had Mrs. Barber or any other woman been on the University's negotiation team prior to 1970?

A Yes.

Q Going back to what year, to your knowledge?

A I'd say at least 20 years.

Q Can you tell us just first from your own recollection as to who was on the union's negotiating committe

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or team for the 1970 contract.

A I would find it hard to remember all of them because they always had a goodly representation but I would suspect there were approximately 24 individuals.

Q Was it customary for the union to prepare a list of its negotiation committee and submit that to the University?

A It has been recently. Prior to that I think we simply prepared an attendance record when the negotiations began.

MR. STITT: Will you mark this for identification, please.

***

(Defendant University Exhibit W marked for identification.)

Q I show you exhibit W for identification, Mr. Nye, and I ask you if you have ever seen it before, whether you can tell us what it is.

A Yes, there is a copy of the list of negotiation committee for Local 241 who engaged in negotiations during the summer of 1970. It carries the letterhead of Local 241.

Q Do you recognize that letterhead?

A I do.

* * * *

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* * * * [1782]

THE COURT: Mr. Nye, do you remember this list as being given to you by some union representative?

THE WITNESS: Yes, sir.

THE COURT: During the course of those negotiations?

THE WITNESS: I think at the first meeting, yes, sir.

THE COURT: At that time do you remember some way or other being aware that the list fairly represented the people with whom you were dealing on the union side?

THE WITNESS: I do.

* * * * [1784]

Q Mr. Nye, I see the names of three Women on Exhibit W in evidence, the union's negotiation team in 1970. I ask you, to your knowledge had women from the union been part of its negotiating committee in prior years?

A Yes, sir.

Q How many, do you recall?

A I don't recall but they -- to the best of my memory -- were always representing the union along with others during any negotiations.

MR. BERKE: I object to this on relevance.

Q You have been involved in negotiations going back to when?

A Beg your pardon?

Q You have been involved in those negotiations with Local 241 going back to what year?

A Probably from the inception or certainly shortly thereafter.

Q Back to the 1940's?

A Yes.

Q Now, in addition to the names of University personnel and union personnel referred to on Exhibit V and Exhibit W, which I will place before you, so we can keep the record straight, were there any other persons who participated in the 1970 negotiations?

A Yes.

Q Who were they?

A University was represented by a Labor counsel.

Q May we have his name?

A A specific gentleman, his name is Mr. Thomas Kerrigan.

Q Is he a member of any firm here in New York?

A He is. He is a member of the firm of Putney, Twomby, Hall and Herson.

Q Did the union side have the benefit of counsel, to your knowledge?

A Yes.

Q Who was the union's counsel during the course of these negotiations?

A Mr. Asher Schwartz; of the firm of O'Donnell and Schwartz.

Q Had either of or both of those gentlemen participated in negotiations between the University and the union in prior years, to your knowledge?

A Yes.

Q Going back how long, Mr. Nye?

A Mr. Kerrigan for the period of I will say at least 20 years. I am not certain as to the length of time that Mr. Schwartz participated on behalf of the union but I would guess at least six or seven times prior to the date in question.

Q Now, in addition to counsel did anyone else participate in the negotiations leading to the 1970 contract?

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A Yes.

Q Who was that, Mr. Nye?

A Federal mediator.

Q Do you recall his name?

A George Byrnes.

THECOURT: Mr. Stitt, I will be adjourning at the close of this subject matter. How much longer are you going to go?

MR. STITT: Your Honor, it's taking longer than I anticipated with these documents.

THE COURT: Two or three minutes more or what?

MR. STITT: I think perhaps I can get this document in and then perhaps that would be a good time to break.

(Defendant University Exhibit X marked for identification.

Q I show you Exhibit X for identification, Mr. Nye. Tell us what it is please.

A It's a copy of a letter dated July 22, 1970, from the firm of O'Donnell and Schwartz to Mr. Frank Brown, Regional Director, Federal Mediation and Conciliation Service; 26 Federal Plaza, New York, New York.

Q Did you receive a copy of that letter in the usual course of your business at about this time?

A Yes, sir.

* * * * [1790]

Q Mr. Nye, I show you a document marked University Exhibit Y for identification. Will you examine it and tell us what it is.

A This consists of five sheets of paper, on the first page of which is on the letterhead of Local 241 Transport Workers Union of America. It's headed, "Proposals to Columbia University," and represents the proposals made by Local 241 to the University preceding the bargaining for the 1970 contract. There were 56 items in all.

MBpa 179 Nye-direct [1791]

Q All right.

A Or there are 56 items.

Q Is there any handwriting on that document?

* * * *

A Yes. [1792]

Q Can you identify the handwriting, Mr. Nye?

A It's my own handwriting.

Q When did you make those handwritten notations?

A I assume at the first meeting with the union because they represent items of clarification or questions against certain of the requests being made.

Q I don't want you to assume anything. What is your best recollection as to the approximate time at which you made those notations?

A The first meeting we had with the union.

Q That would be back in 1970?

A It would have been very likely in June 1970.

Q Is it customary procedure in your negotiations with the Transport Workers Union to receive written proposals from the union?

A Yes.

Q Is this sort of like a kick-off?

A Yes.

MR. STITT: Your Honor, I show the document of five pages initially to Mr. Dryfoos.

I will then offer it after other counsel have had a chance to look at it.

THE COURT: I take it this is the "Kick-off," that Mr. Nye has described?

MR. STITT: Yes.

* * * * [1797]

Q Mr. Nye, I have placed before you five documents, University's Exhibit A, entitled, "Supplemental Memorandum of Agreement," dated October 12, 1972, the printed agreement between the University and TWU dated July 1, 1972, Exhibit Walker Exhibit 12, the 1970 printed agreement, July 1, Labor Exhibit 104, and the two job descriptions previously referred to yesterday marked Exhibit S and T for identification.

Did you sign the supplemental agreement, Exhibit A on behalf of the University?

A I did.

Q Is there a reference in that document to the job descriptions S and T for identification?

A Yes, there is.

Q Whereabouts is that, Mr. Nye?

A Paragraph 4.

MR. STITT: Paragraph 4, your Honor, for the benefit of those who don't have it before them, reads:

"The job description of the classification heavy cleaner shall continue to be the same as heretofore for janitors. The job description of light cleaner shall continue to be the same as heretofore for maids."

THE COURT: Mr. Nye, are those Exhibits S and T, the job descriptions, are those the ones that are referred to in that agreement?

THE WITNESS: Yes, sir.

THE COURT: All right, and H, S and T may be received in evidence to the extent they are now identified.

MR. BERKE: Your Honor, we object to those strenuously.

THE COURT: On what grounds?

MR. BERKE: I thought they were in already and we had that objection.

THE COURT: They have been for identification. They have now been connected by competent proof.

MR. BERKE: I am not objecting to authenticity. I am objecting to relevance citing the Wheaton Glass case.

***

(Defendant University Exhibits S and T received in evidence.)

Q Mr. Nye, I ask you whether you find any reference to the job descriptions Exhibits S and T in evidence in the

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printed 1972 agreement marked Walker Exhibit 12 and received as such.

A Yes, I do.

Q Whereabouts do you find that reference?

A It's at the -- it's at the end of the booklet under the general heading, "Exhibit A, Wage Schedule."

Q Will you read the statement to which you refer.

"A Classifications and duties of employee positions shall be prepared and maintained."

Q Do you find any reference to Exhibits S and T in the 1970 agreement, Exhibit 104?

A I do.

Q Would you point that out to us, please?

A That is also in the section at the end of the contract entitled Exhibit A. The particular paragraph reads, "Classifications and duties of employee positions shall be prepared and maintained."

Q Do you find any reference to Exhibits S and T in the Exhibit Y, the union proposals of 1970?

* * * *

* * * *

A Yes, I do. [1800]

* * * *

MBpa 189 Nye-direct [1801]

In other words, that exhibit is looking towards S and T, is that what you are saying?

MR. STITT: Yes, I am trying to --

THE COURT: Mr. Nye, is that what you are saying?

THE WITNESS: Yes, sir.

* * *

Q Mr. Nye, you made reference yesterday in your testimony to Mr. Asher Schwartz, the union's counsel, during the 1970 negotiations.

A Yes.

MBpa 190 Nye-direct [1802]

Q Has Mr. Schwartz participated in such contractual negotiations and agreements in previous years?

A Yes, he has.

Q Have you yourself been present during the course of those negotiations?

A I have.

* * * * [1803]

Q Mr. Nye, in Exhibit X in evidence, which is Mr. Schwartz' letter to Mr. Brown, Regional Director of the Federal Mediation and Conciliation Service, this statement is made, "The University is aware of this request and joins with us in making it. We also think it would be most helpful if it were possible for you to assign Commissioner George Byrnes to this dispute. We are confident that he can be most helpful."

Q Did Mr. Byrnes enter the 1970 negotiations after this letter, which is dated July 22, 1970?

* * * *

A He did. [1804]

Q Can you tell us how many sessions he attended?

A He participated in eight of the joint meetings.

Q Were these the last eight meetings?

A Yes.

Q At the eighth meeting was agreement reached?

A The eighth of the meetings that he was -- in which he participated was when an agreement was reached.

* * * *

[1806]

Q Tell us what was said by Mr. Byrnes and the others during these eight meetings as best you can recall.

* * * *

A Mr. Byrnes was asked to participate in the negotiations because of the difficulty in which the two partie found themselves. So at the first meeting or the ninth of the meetings in total at that stage of the game that had been held, he was given the background information and the

status of the contract negotiations on the part of the University, and very obviously on the part of the union.

And in the subsequent meetings he attempted both jointly in joint meetings as well as meeting on an individual basis with the two parties, to obtain what further explanations might be necessary in his judgment, and attempt gradually over the succeeding seven meetings to either eliminate or modify any of the proposals that were still then outstanding.

There were -- this was a difficult negotiation, and that was one reason why he was called in, because of its both length and quality, if you will, of the proposals.

THE COURT : Were you present when he was conferring first with your side and then you observed that he would be conferring with the other side?

THE WITNESS: Every time.

THE COURT: And come back and forth between you as an intermediary?

THE WITNESS: Yes, sir.

THE COURT: Were there times when he had the two sides together and consulted with both of you together?

THE WITNESS:That's correct. That probably happened every one of the meetings.

THE COURT: During the course of these meetings,

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did the issues become narrower and narrower?

THE WITNESS: Yes, sir.

THE COURT: All right; until finally an agreement was reached?

THE WITNESS: That's correct.

* * * *

Q Mr. Nye, I put the 1970 contract back before you so you may have it to refresh your recollection.

Could you tell us the change in wage schedules that resulted from this agreement of 1970 as opposed to the earlier agreement of 1968 which has been received?

THE COURT: Don't they speak for themselves, the two agreements, Mr. Stitt?

MR. STITT: I just want Mr. Nye to sum up the -- basically the increases that were made; because there are

a few variables that I want to bring to the Court's attention.

THE COURT: This is a foundation to going on to something else?

MR. STRITT: Yes.

THE COURT: All right, go ahead.

MS. GOODMAN: Your Honor, the witness has not yet indicated that his recollection needs refreshing, and I don't see why we are using that document unless we want to just read the documents into the record.

THE COURT: I asked that and Mr. Stitt said this was a foundation for going onto something else so I will permit it.

A The result of the negotiations led to an increase in wages for all classifications.

Q Was this on a straight across the board percentage increase?

A It was on a percentage or minimum wage.

Q Explain that for us if you will, Mr. Nye.

You may refer to that wage schedule.

A I believe the first increase during the course of the agreement amounted to a 10 percent or a $12 a week minimum, whichever was greater.

Q How did that percentage or $12 minimum affect the

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maid category?

A It was affected significantly because if it had been only the percentage they would have received something quite a bit less than the $12.

Q How much less would they have received?

A Slightly over $8 a week.

Q How much would they have received with this $12 -- what is the difference between what they would have received under the percentage and the difference that they received under the $12 minimum?

A Something slightly less than $4 a week.

Q Was this minimum floor for the maids a subject of discussion during the course of these negotiations?

A Yes, it was.

Q Was there any provision for pay of heavy cleaners besides the percentage increase in that category which came out of this agreement?

A Yes, sir.

Q Tell us about that, please.

A They were also affected by the minimum increase in contrast to the percentage figure.

Q And in any other aspect?

A Yes, there was a new provision to payment to heavy cleaners when operating motor driven equipment, that was the

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subject of negotiations.

Q What was that increase to be or that payment?

A It was negotiated at 25¢ per hour above the regular rate of pay.

* * * *

Q Mr. Nye, do you find a reference to that provision or that subject, I think I should say, in the union's proposals for 1970 which were received in typewritten form as University Exhibit Y?

MR. DRYFOOS: Objection, your Honor. The document speaks for itself.

THE COURT: Well, I suppose it does, but if there is any ambiguity about it, let's see what the proposal was. You may examine --

MR. DRYFOOS: Counsel is just re-emphasizing it.

THE COURT: Well, let's see.

A The answer is yes.

Q Whereabouts, Mr. Nye?

A Proposal number 55.

Q Will you read it to us first in typewritten form?

A "Janitors working on scrubbing floors shall receive 50¢ per hour above janitor's pay."

THE COURT: How does that read?

THE WITNESS: "Janitors working on scrubbing floors shall receive 50¢ per hour above the janitor's pay."

THE COURT: All right, go ahead.

Q Did you discuss that provision during the course of these negotiations with anyone from the union side?

A Yes.

Q And during the course of these negotiations, did you make any handwritten changes on that numbered demand that you just read to us in typewritten form?

A Yes, I did.

Q Are those changes in your own handwriting?

A Yes.

Q Now, would you read us proposal number 55 as corrected in your handwriting, Mr. Nye.

A "Janitors working on stripping floors and scrubbing rugs shall receive 50¢ per hour above the janitor's pay."

Q Do you recall what was said on the union's side, if anything, in support of that demand number 55?

MR. DRYFOOS: Objection. Could counsel be more specific? Said by whom?

THE COURT: Let's find out what was said.

MR. BERKE: I object to hearsay also, your Honor.

January 27, 1972 applied for a janitor's position with the Buildings and Grounds Department?

A No.

Q To your knowledge, prior to that date had any woman held a janitorial position paid at that rate with the Department of Residence Halls?

A Yes.

MR. STITT: I draw your attention if I may, your Honor, to a statement at page 3 of exhibit --

THE COURT : Just give it to me.

MR. STITT: And, "If a woman currently on the staff or otherwise wishes to apply for janitor positions as they become available, she will receive full consideration."

Q I ask you, was that statement any change in University policy?

A No.

THE COURT: To the extent that you can remember it, Mr. Nye, please do.

Overruled.

A Most of the discussion on the part of the union was conducted by either the international representative or the local president, the then local president.

Q Mr. Hanaberry and Mr. O'Brien respectively?

A O'Brien at that time.

Q Continue.

A And in the course of discussing this particular proposal, the position taken by the union was that this type of work was of a -- of such a difficult nature, it required a degree of proficiency that in the judgment of the union work being done on that basis should receive premium or extra pay.

* * * * [1814]

Q Did you and the University negotiation team consider this demand, Mr. Nye?

A Yes, we did.

Q Did you make any proposal in response?

A Yes, we did.

Q What was that?

A I can't recall specifically our first proposal

but I would estimate that it probably was 10¢ an hour.

Q And as the agreement in evidence shows, you settled on 25¢?

A We finally settled on 25¢.

Q Now, I ask you, Mr. Nye, did you sign that 1970 contract on behalf of Columbia University?

A Yes, I did.

Q When did you sign it?

A November 25, 1970.

* * * *

[1816]

Q Now, Mr. Nye, do you find clause 20 in that 1970 contract before you?

A Yes, sir.

[1817]

MBpa 205 Nye-direct

Q Did that clause come up for discussion during the 1970 negotiations?

A Yes, it did.

MR. STITT: I will read the clause, your Honor. Number 20, "Neither the employer nor the union shall discriminate against or in favor of any employee on account of race, color, creed, nationality, origin, political belief, sex, or age."

Q Tell us about the discussions.

A I can't remember at which of the particular meetings the topic was raised, but sometime during the course of the negotiations the suggestion to formalize this subject as described in section 20 was raised between the parties. During the course of the negotiations or during the time following agreement reached that the wording of the contract was being redrafted for printing, this was the mutually agreed upon provision to be included in the contract.

* * * *

[1818]

THE COURT: Mr. Nye, do you have a recollection of the substance of the discussions concerning that section 20?

A Not specifically, your Honor, because there was no disagreement as to whether it should be included, and as a consequence, it was set aside until the wording of the contract was to be formalized if I may put it that way.

Q Did you consider this clause 20 to be a change of University or union policy, Mr. Nye?

A No, sir.

Q Mr. Nye, I ask you whether the University has paid wages in accordance with the terms of this 1970 contract.

A Yes.

[1819]

MBpa 207 Nye-direct

Q Does the 1970 contract contain any reference to a grievance procedure?

A Yes.

Q Would you point out the pages where that can be found in the record?

A Grievance procedure is identified at provision 14 on page 19 and consists of approximately three full pages.

Q Is this the first contract between the University and the union which made provision for a grievance procedure?

A No.

Q When did that start, to the best of your memory?

A To the best of my memory, the grievance provision was incorporated in the first agreement.

Q Is there a grievance procedure contained in the current 1972 agreement?

A Yes.

* * * *

[1820]

Q Mr. Nye, over the years, say 1970, 1969, 1970, 1971, 1972, have you played any part or role in the grievance machinery between the University on the one hand and the union on the other?

A Yes.

Q What has been your general role, if you would give that for us, please.

A Well, in the 1970 contract, which is typical, my then position was specifically mentioned as step three of the grievance procedure, and in addition to that, I was normally kept informed of the instances of the second step, usually by means of a written memorandum from the department involved.

Q Now I am going to ask you whether you recall any grievance or complaint regarding maids coming to your attention during the year 1971.

A Yes, I do.

Q How did you receive word of that matter?

A I don't remember who representing the union

identified the complaint, but the gist of it was that the then titled maids wished to discuss their work schedules or conditions relating to work with the Department of Buildings and Grounds representative.

Q Is it customary when any such meetings are held for a memorandum to be prepared or is that ever done on occasion?

A Depending on the circumstances or the degree of the problem or issue involved.

Q I am going to place before you --

THE COURT: Mr. Stitt, I take it the witness did prepare a memorandum?

MR. STITT: I believe the question called for memoranda or a memorandum which he may have received, your Honor.

THE COURT: I see. All right.

Q I am going to place before you, Mr. Nye, two documents, the first of two pages, bearing date of August 10, 1971, and the second document of one page but on the same subject matter, your Honor, and I so represent, bearing a typewritten date of August 16, 1971, a handwritten date of August 16, 1971, and a receipt stamp, Vice-President for Business, dated January twenty -- I can't make out 6 or 8, -- 1972.

Q Would you tell us what those documents are, Mr. Nye?

A The first two pages are copies of a memorandum dated August 10, 1971 to Mr. John Gardner, from Mr. Dan Wade.

Q Do you recognize any of the handwriting on that first page?

MR. DRYFOOS: Your Honor --

THE COURT: Just yes or no, please.

A Yes.

Q Whose handwriting do you recognize?

A Mr. Gardner.

Q Where does that appear?

A His initials are written in over his typed name, and under the next line entitled, "Subject," in addition to the typed words, "Maids-Grievance Review," in his handwriting, "TWU number 241."

Q Will you continue to the second page and do you

* * * *

recognize any handwriting on that document?

A Yes.

Q What is that, sir?

A It's the name, "Dan," in handwriting written by Mr. Wade who was then the assistant to Mr. Gardner.

Q How long have you known Mr. Wade?

A For the length of his employment at the University which was approximately three to four years.

Q And you have seen his signature on a number of occasions?

A Yes.

Q Also Mr. Nye, on page 2, does your name appear on that document?

A I t does.

Q Indicating what, sir?

A That I received a carbon copy.

Q I ask you, did you receive a copy of the first two pages of this exhibit in or about August of 1971?

A Yes.

Q Would you continue to the third page of that exhibit, which, your Honor, bears the date of August 16th. Will you tell us what that document is, please?

A The third page is a memorandum dated August 16, 1971 to Mr. Daniel L. Wade from Mr. Sidney Ackroff.

[1824]

Q Are you familiar with Mr. Ackroff's handwriting?

A I can't say that I am.

Q All right. Was he employed by the Buildings and Grounds Department at or about the time that appears in that instrument?

A Yes.

Q Do you see any stamp that appears in that document

A Yes.

Q Whose stamp?

A My office.

Q I ask you, Mr. Nye, whether each of the two documen which make up that exhibit were prepared in the ordinary course of business of the University.

A Yes.

* * * *

[1831]

(Defendant University Exhibit Z received in evidence.)

MR. STITT: Your Honor, I just call attention to a portion of this document. It's a summary of a meeting held in 411 Low Library at 8:00 a.m. on August 10th to discuss a listing of complaints made by a group of maids on August 6, 1971. Attending for the union Local number 241 --

* * * *

* * * * [1832]

MR. STITT: For the University, Messrs. D.L. Wade, S. Ackroff and N. Shervington.

Attending for the Local Union 211, Messrs. J.O'Brie W. Smith, E. Trotter, N. Dean, and W. McNeill.

For the University, Messrs. D.L. Wade, S. Ackroff and N. Shervington.

Under complaint number 4, "Maids are obliged to collect heavy garbage.(Schermerhorn Extension.)"

Under "Corrective Action" in the companion paragraph, "This is corrected immediately upon discovery by Mr. Shervington. The janitor will haul away the trash."

* * * * [1834]

Q Mr. Nye, was there any demand or request made during the course of the 1970 negotiations that maids receive the same pay as janitors?

A No.

Q Either written or oral?

A No.

Q Were maids part of the union's negotiating committee?

A Yes.

Q Were those maids Mrs. Shea, Mrs. Tookes, and Thelma Williams?

A As I recall, those are the three.

* * * *

* * * * [1835]

Q Was there any complaint made by any of those three ladies or anyone else concerning the performance by maids in residence halls of heavy cleaner duties on a volunteer spot basis?

A I am sorry, would you --

MR. STITT: Would you read the question back to the witness.

(Question read.)

A No.

* * * * [1836]

Q Was there any demand made that maids in the Buildings and Grounds Department receive the same pay as janitors in the Buildings and Grounds Department?

A No.

* * * * [1837]

Q Mr. Nye, does the University have a practice with regard to job or what might be referred to as promotional opportunities within the University and the giving of notice with respect to such option or opportunity?

A Yes.

Q Would you tell us what that practice is and how long it has been in existence, to your knowledge?

MS. LIBOW: Your Honor, I would object to this

because there has been no proper foundation as to this witness' expertise as to this area.

MR. STITT: If your Honor please--

THE COURT: He is a vice-president in charge of all of these -- this area.

MR. STITT: And formerly business manager, your Honor.

THE COURT: I think he's been qualified.

MR. STITT: A host of responsible positions over the years.

THE COURT: Overruled.

Q Will you continue, Mr. Nye.

A Talking about the present time?

Q Yes, start at the present time.

A At the present time there is a posting normally distributed weekly by the personnel office listing all positions known to be available as it relates to what is known as supporting staff throughout the University.

Q To whom is that sent in regular course?

A Distributed through to all departments and schools, administrative offices and posted on the bulletin boards.

Q That is what I was leading into. Is there any posting procedure that is adhered to with respect to

such option or opportunity?

A There is.

Q All right. Will you tell us what that procedure is as you are familiar with it and as you have observed it?

A As I previously indicated, it's distributed by the personnel office, and the recipients are requested to post such notices in appropriate conspicuous spots, for the most part, bulletin boards.

Q Are such notices, to your knowledge, posted within the University's Department of Buildings and Grounds and also the Department of Residence Halls?

A To the best of my knowledge, they are.

Q Whereabouts are these postings placed?

A Well, they are placed on bulletin boards or other locations where persons working at the University have an opportunity to note such postings.

Q Are these bulletin boards located anywhere near the time clocks that B & G employees use, for example?

A The Department of Buildings and Grounds --

MR. BERKE: Objection to the leading, your Honor.

THE COURT: Overruled.

A In the Department of Buildings and Grounds normally have bulletin boards adjacent to the time clocks where the time cards are located. They tend to be not quite as public areas as some of the others to which I previously referred.

Q Is there a place on that posting for an employee to indicate his or her interest in the job?

MR. BERKE: Objection, your Honor. The postings should be produced.

THE COURT: Are those in evidence?

MR. STITT: Since it's in evidence, your Honor, I will go forward.

THE COURT: Very good.

Q Does the University have any practice or custom concerning the position of present employees with regard to job vacancies in the University and their opportunity as opposed to opportunity of persons outside the University?

A Persons within the University have priority of application prior to the University seeking employees elsewhere.

Q How long will those postings be held open for internal interest, if I may use that term?

A Approximately a week.

Q How long has that procedure been followed generally?

A With the adoption of this affirmative action program, it became more formalized but prior to that time, and in accordance with the -- in this instance, the TWU contract relationship, as those positions were posted, they were given a period of time, perhaps a week.

Q How long has that been in effect?

A Many years.

Q Five, ten, fifteen?

A Fifteen to twenty.

* * * *

Q Mr. Nye, were you present in Court when [1847] Mrs. Tookes, a Residence Halls employee, testified about her being offered a promotion to supervisor which she refused?

A No, I was not here at that moment.

Q I ask you, to your knowledge, have any other maids been made or become supervisors at Columbia within its Buildings and Grounds Department or Residence Halls?

A Yes.

Q How many, to your knowledge, Mr. Nye, approximately

MS. GOODMAN: Can we have a time?

THE COURT: Yes, we'll get to that, I am sure.

A I should judge eight or ten people.

Q Over how many years, to your knowledge?

A Perhaps 25 years.

Q There's been testimony in this record concerning a Mrs. Pernales and she's been identified by Mrs. Dickens as a supervisor at Butler. Can you tell us how Mrs. Pernales -- what she did prior to her becoming a supervisor?

A She was transferred from the School of Social Work. I don't know her specific duty at the time she worked at the School of Social Work.

Q So she would be in addition to the maids who were

promoted to supervisor?

A Yes.

Q Within Residence Halls and Buildings and Grounds, what personnel are under the jurisdiction of the supervisor?

A Those currently known as light and heavy cleaners.

Q Is that also true of Mrs. Pernales?

A Yes.

* * * *

Q If I understand your testimony she would be in charge of the heavy cleaners or janitors at Butler as well as the light cleaners or maids?

A That's correct.

Q Would that also hold true of the other supervisors?

A That's correct.

* * * *

[1850]

Q Mr. Nye, have any other -- and I don't mean to include Mrs. Pernales -- have any other maids or light cleaners gone on to other positions at the University, to your knowledge, besides supervisor?

A Yes.

Q Who?

A I know of one maid at one of the residence halls who became an office assistant in the same building.

Q When did that occur, approximately, can you tell us?

A 15 years ago, perhaps.

Q Is that your best estimate?

A Maybe as much as 20.

Q All right. Have any maids become, to your knowledge, security guards?

A Yes.

Q Who.

A By name?

Q Yes, if you can give us the names.

A Mrs. Forbes, Mrs. Boler, recently Mrs. Walker. There is one other whose name at the moment I can't recall.

Q Might I suggest Marion Nealy?

A That's correct.

Q There has been testimony about a Miss Vickery who became a security guard?

A Correct.

Q What was her previous employment, Mr. Nye?

A She was an office assistant.

Q Incidentally, what is the pay, present pay rate of security guard as compared with heavy cleaners and light cleaners?

A It's higher.

Q Has that always been the case?

A No.

Q When was this change made and under what circumstances?

A For many years guards were paid the same rate as janitors.

MR. LIBOW: Move to strike that answer as unresponsive.

MR. STITT: Your Honor, he is in the middle of his

answer.

THE COURT: No, overruled. Go ahead.

Q Continue, Mr. Nye.

A Approximately eight years ago, we began discussing with the union the possibility of a wage differential between those two classifications. As a matter of fact, the initial discussions may have gone back further than that.

Q Who made the original suggestion that the security guard position's pay be increased?

A The University.

Q Did there come a time when an agreement was reached with the union on that?

A Finally.

Q When was that?

A I'm not certain of the time. It would show up in the contracts but approximately six or eight years ago.

Q Can you relate that to any disturbances at the University?

A Well, the problems in 1968 highlighted the situation in a rather significant manner.

Q After that highlighting, was the pay of security guards increased above janitor?

A Yes.

* * * *

Q I show you this document, Mr. Nye, marked University Exhibit AA for identification. Will you tell us what it is, please.

A It's a statement by Columbia University concerning the lay-off of maids at the University.

Q Did you have anything to do with the preparation of that statement?

A I was the principal University officer involved with its preparation.

Q That particular typewriting on that sheet of paper, where does that come from?

A The Office of Public Information.

Q Have you seen forms of University press releases before?

A Yes.

Q Emanating from that office?

A Yes.

Q Is this in that form?

A Yes.

Q I draw your attention to the last page, 1.18.72 and then over to the right on the same line 13, column 866.

What does that refer to, Mr. Nye?

A That is the sequence of press releases that

have been put out by that office.

Q That 13,866 would be the sequence of releases?

A Yes, sir.

Q What would the 1-18-72 be?

A The date.

Q January 18, 1972?

A Right.

Q I ask you if this document was prepared by the University in the course of business.

A Yes.

MR. STITT: Your Honor, I wonder if I might approach the side bar at this point.

MS. GOODMAN: I think there is a second question, whether it is the ordinary course of the University's business to prepare press releases.

MR. STITT: I will ask that.

Q Mr. Nye, is it the ordinary course of the University to prepare press releases?

A Yes.

THE COURT: Mr. Nye, what was the distribution of this release, Exhibit AA? What was done with it after it was typed up?

THE WITNESS: It was distributed throughout the

campus as well as externally, your Honor.

THE COURT: When you say distributed throughout the campus, what does that mean?

THE WITNESS: All offices, every office.

THE COURT: Was it placed on bulletin boards?

THE WITNESS: Placed on bulletin boards and also put in copies in places of public -- where the public might help themselves. That is the public coming to the campus.

THE COURT: In other words, so that if someone were looking at a bulletin board next to their timeclock --

A THE WITNESS: Yes, sir.

THE COURT: -- when they came in to do light cleaner or heavy cleaner work, it was there to be seen?

A Very definitely.

THE COURT: I see. I decline to admit this under 1732 of Title 28 because I do not regard this as being prepared, maintained, kept,or in any other way a document originating in the regular course of business.

On the other hand, as a statement of the University's position at that time, available for communication to heavy and light cleaners, I think it becomes admissible for that purpose and that purpose alone. For that reason I would permit it to be received in evidence.

MR. BERKE: Your Honor, may I comment to this

degree --

THE COURT: I do not permit it in as a statement of the underlying facts, but merely as the Univer ty's statement of its position.

MR. STITT: That is understood.

* * * *

[1861]

Q Mr. Nye, did there come a time, after the date of this notice, January 18, 1972, when a female expressed interest to you in a janitor's job at Columbia?

A Yes.

Q When was that and would you tell us who and the circumstances?

A I can't pinpoint the precise time but within a very few weeks following that date of January 18, 1972, then a classified maid by the name of Moss made application for a heavy cleaner position.

Q Is that the Mrs. Moss who testified earlier in this case?

A Yes.

Q Would that have been on or about January 27, 1972,

at the same meeting at which you spoke to Mrs. Forbes?

A It could have been.

Q Continue.

A She also was encouraged to pursue the matter further through the proper channels.

Q That was your statement to her?

A Perhaps not quite worded but that in effect was it.

Q All right.

A And I believe she did, and I think also was interviewed for the position inquestion that was then open.

Q Is there a Mrs. Bardax who works for the University?

A Yes, used to.

Q Did she work for the University in about January or February 1972?

A Yes.

Q What was her position?

A Employment manager or equivalent.

Q Did you have any contact with Mrs. Bardax concerning Mrs. Moss' expression of interest?

A I don't recall whether I had any specific conversation with her or not.

Q To your knowledge had any other woman prior to

* * * * [1864]

Q Did there come a time later in 1972 when the University posted some heavy cleaner positions?

A Yes.

Q Do you recall when that was, approximately?

A One I think of particularly was in August 1972 although there may have been others as well.

Q Tell us what information was given to you at that time in your capacity as vice-president of business.

A Postings for these heavy cleaners in August came about as a result of during the course of the

negotiations with TWU.

Q That would be the 1972 contract?

A That's correct.

Q Did a group of women commence training as heavy cleaners in or about August or September 1972?

A Yes.

Q How many, do you recall?

A The number that actually began training was seven, to the best of my memory.

Q Was that within the Department of Buildings and Grounds?

A Yes.

Q Does Mr. Gardner keep you informed on occasions of what is going on in his department by written communications as well as oral?

A Yes.

Q Is that done as part of the ordinary course of business?

A Yes.

Q I am going to show you this document, Exhibit BB for identification, and I ask you if you have ever seen it before.

A Yes, I have.

Q If so, please tell us what it is.

TRANSCRIPT

* * * *

[1866]

A This is a departmental memorandum dated 9th of October 1972 to me from Mr. Gardner with the subject, "Posted Notices - Heavy Cleaners."

Q Do you recognize Mr. Gardner's signature on that document?

A Yes.

Q Did you receive that document on or about the date indicated?

A There is a stamped receipt in my office on October 10, 1972.

MBpa 255 Nye-direct [1867]

Q That would be the day following the date on the memorandum of October 9th?

A Correct.

Q Do you recall receiving the document on or about that date of October 10th?

A I do.

* * * * [1869]

Q Now, Mr. Nye, I believe you may have made reference to this document earlier. I show you University Exhibit A, which is the supplemental memorandum of agreement between the union and the University, bearing date of October 12, 1972, and I will ask you if you find a reference in that document to the posting of any additional heavy cleaner positions besides those about which you have just testified and which were summed up in Mr. Gardner's

memorandum of October 9th, and now received as University Exhibit BB?

A Yes.

MR. STITT: Your Honor, this is paragraph 5 concerning the seven jobs with light cleaners getting priority. It's been read several times.

Q I ask you, Mr. Nye, to your knowledge, did any light cleaners apply for any of those positions?

A No.

Q Has the University continued to post vacancies for heavy cleaner during the years 1972, '73, and '74?

A Yes, although I don't know how many.

Q Have those notices included positions of heavy cleaner in B & G as well as the residence halls?

A Yes.

Q And to your knowledge has any woman applied for any of those positions?

A No.

* * * *

* * * * [1879]

MR. STITT: Your Honor, I place before the witness a four-page -- excuse me, three-pages, which has been referred to as University Exhibit H for identification.

Q I ask you, Mr. Nye, to tell us what that document is, please.

Just identify it for us.

A This is a print-out of three pages entitled, "Maids," as of 1-31-72.

Q When you say print-out, what sort of print-out?

A Print-out from the personnel office.

* * * * [1888]

Q Mr. Nye, did there come a time in or about January 1972 when the University announced a lay-off of 30 light cleaners then known as maids in the Department of Buildings and Grounds?

A Yes.

Q Let me ask you this question so the record will be perfectly clear: Was that lay-off ever in fact imposed?

A Was it? I am sorry, I didn't hear the last word?

Q Was that lay-off in fact ever imposed?

A No.

Q Subsequently in August 1972, did the University give a second notice of lay-off to 27 or 28 maids or light cleaners?

A Yes.

Q Was that lay-off ever in fact imposed?

A No.

Q Was the other lay-off announced on or about January 8, 1972?

A Approximately that time, yes.

Q Would you tell us in your own words the considerations and the reasons which led to the giving of that notice?

A The reason for the lay-off notice to the employees in question was purely financial. It followed a series of changes in the retention of staff at Columbia over a period, quite a period of time prior to that, perhaps as much as two years, as a result of the continuing financial difficulties in which the University found itself.

Q What was the financial and budgetary situation of the University as of January 1972 and the years immediately prior thereto?

A The University had sustained a --

MR. BERKE: Your Honor, I object to this. I think this is not the best evidence.

THE COURT: Overruled. This is the vice-president of business here.

MR. STITT: Your Honor, we have the vice-president of business.

THE COURT: Overruled. This gentleman is the vice-president of business. Overruled.

Q Continue, Mr. Nye.

A For the five-year period up to and including

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June 30, 1971 --

Q Is that the end of the University's fiscal year?

A That's correct.

Q Continue.

A The University had experienced a total loss approximating 55 to 60 million dollars; and was in the process of attempting to respond to that continuing difficulty in order to attempt to reach a situation whereby the losses would be certainly reduced and hopefully ultimately eliminated.

Q Were these annual losses as much as a million dollars?

A Annual losses?

Q Yes.

A I think the largest loss in any one year was $16 million, approximately.

Q And this was during the five-year period prior to January 1972?

A Yes.

Q Continue, Mr. Nye, with the general effort made by the University to bridge this gap.

A One of the important factors leading to the appointment of the incumbent president, Dr. McGill, was the direction by the trustees that he implement as quickly as

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possible any and all steps that could be taken to address this financial problem.

Q When did Dr. McGill come aboard as president?

A Dr. McGill has been with us -- I think he is in his fourth year, if I recall.

Q So that would take him back to 1970?

A Yes.

Q All right, continue.

A All departments were affected in terms of restricting hirings, reduction of programs.

Q By all departments, do you mean academic as well as administrative?

A Academic and administrative.

Q Continue.

A And instructions were issued to make whatever curtailments and changes in operations which could be made as quickly as possible consistent with the goal of reducing the deficit.

MR. BERKE: Your Honor, I move to strike these answers as they relate to the Secretary's case. I understand that they appear to be offered as some sort of a reason for announced lay-offs; and to that I will not address myself, but insofar as they may be going into propriety of finaical inability to pay as to an injunction issued for

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back wages or any other relation to the Secretary's case, I would move to strike the answers as they relate to that matter.

THE COURT: Mr. Berke, without getting into whether you are right or wrong on that and without expressing any opinion on that at this time, I think the evidence should be received.

Go ahead.

Q Did there come a time, Mr. Nye, when there was a curtailment of maid service in the residence halls?

A Over a period of time, there were several occasions when maid service was curtailed, yes.

Q Did that result in the transfer of any maids or light cleaners from the residence halls to D & G?

A In one instance, yes.

Q Was that around the summer of 1970?

A Yes.

Q How many were transferred over at that time?

A Approximately 15 to 20. I'm not sure of the exact number.

Q Was that step taken to avoid laying off those employees at that time?

MS. GOODMAN: Your Honor, objection as to leading.

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THE COURT: Overruled.

A The changes in service in the residence halls leading to the reduction in staff at that time was of such nature that something between 20 and 30 maids' services were no longer required. If I remember correctly, they were all given the option of transferring to the Department of Buildings and Grounds, being absorbed by that department. A few of them did not wish to take advantage of it.

Q What happened to those few?

A They left of their own accord, were given severance pay.

Q Did this result in increasing the normal complement of maids or light cleaners in the Buildings and Grounds Department?

A Yes.

Q What will be the rate of attrition? with respect to maids at D & G up until this time?

A I don't believe I can answer that question.

Q Did you have any hopes of being able to absorb the additional maids?

A It was hoped that within a reasonable period of time we would be able to absorb the number.

Q Did that work out, Mr. Nye?

A No.

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Q Tell us generally the economies taken within the Buildings and Grounds Department. You testified that all of the University's departments, academic and administrative were involved in its cost-cutting effort.

A I'd say during the period 19 -- possibly as early as '69 but certainly in 1970-71, three principal steps were taken. Positions remained unfilled in those cases where persons left of their own accord. Our retirement policy, which heretofore had permitted some extension beyond the normal age of 65 was eliminated; and anyone on extension was retired at that point. Those reaching age 65 were not permitted to extend their employment.

Q At what level were these cut-backs or reductions in force in Buildings and Grounds?

A They were in evidence throughout the entire department. For example, an assistant director was -- was actually terminated in this case. Office personnel, I'd say every division within the department --

Q Powerhouse, any cut there?

A Powerhouse?

Q Mechanical shop.

A The shops, the grounds men.

Q What about your own office, Mr. Nye?

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A When my predecessor left and I assumed his positio my position remained unfilled.

Q That was the position of business manager?

A Right.

Q Did there come a time when you realized there would have to be some steps beyond normal attrition? or any sort of attrition to reduce the excess capacity of maids?

A Yes.

Q When was that, sir?

A The University was aware of it during the preparation of the '71-'72 budget, which would have occurred sometime in the early spring of 1971, because in line with the other steps that had been and were being taken, it was felt that we could curtail or reduce the frequency of operations normally provided by the classifications then known as maids.

Q What sort of operations did you feel could be reduced?

A Office and classroom cleaning, basically.

Q Dusting?

A Dusting.

Q Wiping windowsills?

A We in essence went on an alternate day rather than

every day operation.

Q Was there any consideration given to reducing the services performed by janitors?

A Yes, there was.

Q What was that consideration and what were the figures?

A It was felt that the basic duties performed by that classification could not be changed in any significant way because of the necessity to perform them daily.

Q Such as, Mr. Nye?

A Removal of trash, washing or cleaning and sanitizing the lavatories; keeping the corridors and stairwells clean.

Q Are those functions done on a daily basis throughout the University?

A Yes, they are.

Q Did there come a time when the University consulted with the Transport Workers Union concerning this problem?

A Yes, we did.

Q When was that, Mr. Nye?

A I believe it was in November of 1971.

Q Was there a meeting of some sort?

A There was.

Q Did you attend that meeting?

A I did.

Q Would you tell us who was there besides yourself?

A I can't remember specifically except for Mr. Gardner. I am sure there were some other representatives of the University.

Q Mr. Hanaberry or Mr.O'Brien there?

A Yes, they were, representing the union.

Q What about Mr. Lyons and Mr. Dean?

A I can't recall specifically. I think Will Lyons was there. I am not sure about Mr. Dean.

Q Do you recall any other University representatives being there besides yourself?

A I don't recall except Mr. Gardner.

Q Where was this meeting held?

A In the central administrative office known as Low.

Q Is that your office or --

A No, this was a small conference room on the same floor.

Q Would you tell us what was said at that conference as best you can recall?

A We expressed our concern to the union at the lack

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of motion in terms of numbers of maids staying on the job in view of our curtailed budget, and the fact that the duties of this particular group had been reduced in terms of frequency, and that we felt that we could not wait much longer before taking definitive action in an attempt to reduce the working staff to a number which would be consistent with the budget.

We further pointed out that we were running low on the number of janitors that were being carried in the budget which was helping partially to offset this continuing higher cost, but that they were not in balance even with that and therefore it looked very much as though a lay-off was imminent.

Q Were any numbers mentioned at that meeting by you?

A I can't recall.

Q What was said by the union's representatives?

A I think they shared our regret that --

MR. DRYFOOS: Objection, your Honor.

THE COURT: Yes. Mr. Nye, as best as you can recall, what was said in words or in substance?

MR. DRYFOOS: I move to strike the last sentence.

THE COURT: All right, strike it out.

A I don't recall anything too specific having been

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said except that the information given to them and the best of my memory there was no real significant response.

Q Was there any statement by the union representative that this proposed action was unjustified?

A No.

Q Prior to January 8, 1972, was there a claim by any governmental agency that Columbia University should have been paying maids at the janitor rate?

MS. LIBOW: Objection, your Honor.

A No.

THE COURT: Overruled.

Q Prior to that date, had there been any claim, any sum claimed by the Transport Workers Union?

THE COURT: To your knowledge.

Q To your knowledge.

A On the maid-janitor matter?

Q Yes.

A No.

Q Prior to that time, had there been any claim by maids themselves that they should be paid at the janitor rate for maids' work?

MS. GOODMAN: Objection as to relevancy.

A No.

MS. GOODMAN: There is no such thing as waiver in this.

THE COURT: Overruled.

A No.

Q Mr. Nye, did the University's operating deficit continue after January 1972?

A Yes.

Q Continuing till August 1972, had there been any attrition in the maid force within the Buildings and Grounds Department?

A I can't recall exactly but I would assume that during that period of time there might have been one or two who might have retired.

Q But no more than --

A Otherwise --

Q But no more than just a comparative few?

A Small number.

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MS. LIBOW: I move to strike the answer. If it's his assumption I don't see that that's --

Q Is that your best estimate, recollection?

A My best estimate, yes.

THE COURT: I'll allow the latter answer to stand and strike the former.

Q In August 1972 was another lay-off notice given?

A There was.

Q I believe you previously testified that this was not imposed?

A Not --

Q Not imposed in fact?

A No, that's correct.

Q Would you tell us the facts and circumstances which led up to the withdrawal of the lay-off notice by the University?

A The two chief events leading to the withdrawal of the lay-off notice of August 1972 were the continuing negotiations with Local 241 of TWU and the --

THE COURT: Mr. Nye, perhaps I missed it but I take it that notice was occasioned by the financial condition of the University?

THE WITNESS: Yes, sir.

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* * * * [1903]

THE COURT: All right, now go ahead.

A And the intervention of EEOC.

Q Was there any request made by EEOC that the lay-offs be suspended while an effort was made to negotiate a settlement?

A To the best of my memory there was. I did not actually participate in the meetings with EEOC.

Q Were you kept advised of those meetings?

A Yes.

* * * *

[1904]

Q Can you give us the date, Mr. Nye, when the original notice of lay-off was withdrawn?

A Not from memory, no, sir.

Q I am going to show you Exhibit DD for identification, and ask you to examine that document to see if that will help refresh your recollection as to the date of the initial withdrawal of the lay-off notice.

A The initial date of the agreement to withhold the lay-off notice was August 25th.

* * * *

[1907]

CROSS EXAMINATION

BY MS. LIBOW:

* * * *

[1925]

Q Mr. Nye, are there presently any maids, any males employed as maids or light cleaners at Columbia University?

A To the best of my knowledge, no.

Q Were there in 1972?

A To the best of my knowledge, no.

Q Are there presently any males employed in the job category of seamstress-linen maid?

A To the best of my knowledge, no.

Q Have there ever been, to your knowledge?

A To my knowledge, no.

Q I believe you stated on direct examination that prior to 1972 there were no women employed as janitors, is that correct?

MR. STITT: No, I object, your Honor, to the form of that question.

THE COURT: Sustained.

Q Were there any women employed as janitors prior to 1972?

MR. STITT: I object again to the form of that question.

THE COURT: Overruled.

MR. STITT: May it be broken up into departments and then I will not object.

MS. LIBOW: I don't understand.

THE COURT: Overruled. You may have an answer. Go ahead.

Q Could you please answer the question.

A Within the University? Yes.

Q And what were their titles?

A What date are you asking specifically?

THE COURT: Prior to '72.

A Their titles varied from janitor to shower maid, going backwards in time.

Q I show you -- I think you have seen this, Mr. Stitt, it's Plaintiff's Exhibit 1, seniority list of service employees, and the Secretary of Labor has also marked it as their Exhibit 125.

I show you this exhibit, Mr. Nye, and I ask you to identify the category to which you were just referring.

A This category here, listing the shower maids.

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Q Is that what you were referring to as the category of female janitors prior to 1972?

A Yes.

Q Can you tell us when they were referred to as janitors?

A I can't specifically, no.

MR. STITT: Your Honor, may the record show that union agreements back to the 1940's have been received in evidence.

Q Isn't it a fact, Mr. Nye, that they have never been referred to as janitors?

THE COURT: That will be a matter for redirect for you, Mr. Stitt, the basis.

A I don't believe I can answer that question.

Q You don't have to, Mr. Nye.

I think the record will indicate that.

THE COURT: Strike your comment. Strike your comment, please. Do not comment.

Q Is there a category within any of the union contracts that you have negotiated entitled, "Shower maids"?

A Yes, there has been a shower maid.

Q In which contract, can you tell us?

A I can't tell you specifically. It's listed in the exhibits in the contracts but I know they have been there.

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Q Within the last ten years?

A I 'm not sure.

MS. GOODMAN: Your Honor, during examination can all the documents be placed at the clerk's desk because they are sitting on different people's -- everybody is holding their own evidence.

THE COURT: Let's see where we go.

Q I show you Exhibit 112, and I ask you, on page 28 of that exhibit, if you will tell us if the term shower maid appears, in the listing of classifications of employees covered by that contract.

MR. STITT: If your Honor please, Exhibit 112 for identification is a union agreement bearing date of July 1, 1949.

A Yes, it reads, "Janitor (shower maid.)"

Q In that exhibit is there any differentiation between males and females employed in that category?

A Any differentiation? In terms of the wages paid?

Q No, in terms of indicating whether they are males or females.

MR. STITT: If your Honor please, I think we have been talking about wages here.

THE COURT: It speaks for itself, doesn't it? Doesn't the agreement speak for itself?

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A I don't quite understand what you mean. It reads, "Janitor," and then, "(shower maid.)"

Q It doesn't state whether the janitor or shower maid positions are filled by male or female?

THE COURT: Miss Libow, whatever it shows --

Q How many hours a week does it indicate that job for?

A 36.

Q I show you Plaintiff's Exhibit 105 which is the agreement between Columbia University and the Transport Workers Union of America dated July 1968, and I ask you to look through the list of job categories and tell us if shower maid appears.

A It does not.

Q I show you --

MR. STITT: Your Honor, before we leave the 1968 agreement, I would like to know whether there is a category for janitor.

MR. BERKE: I object, your Honor, to this interruption of cross examination.

THE COURT: Yes, I think, Mr. Stitt, save this for redirect.

MR. STITT: Fine, thank you, your Honor.

Q I show you Plaintiff's Exhibit 12, which is also

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the union contract entered into between Columbia University and the Transport Workers Union of America Local 241 dated July 1, 1972, and I refer you to the list of job categories covered by the agreement, and I ask you to indicate whether there is any category of shower maid indicated on that list.

A No, there is not.

MR. STITT: Now, if your Honor please, I must approach the side bar.

THE COURT: Do you want it on the record?

MR. STITT: Well, the 1972 agreement includes the terms heavy cleaner and light cleaner; and I believe the Labor Department has already introduced an exhibit that's been received which shows a, "Shower Maid," at Johnson Hall being listed as heavy cleaner.

THE COURT: This is argument. Please let's just gather facts this afternoon and get this witness finished.

MR. STITT: Yes, I just want to protect the record, your Honor.

Q Mr. Nye, how many shower maids are employed at present by the defendant University?

MR. STITT: I object to the form of that question, your Honor.

THE COURT: Well, I take it Miss Libow, you are

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asking how many people perform the duties of somebody called a shower maid sometime past? Is that right?

MS. LIBOW: No, that's not correct, your Honor. I am asking how many people are employed in the job category of shower maid at the present time.

THE COURT: You have an answer to that which I take it is none. Is that right?

MR. STITT: Your Honor, my objection is overruled.

THE COURT: I gather from the record I take it the record is clear at this point that we now have no category.

MS. LIBOW: Is Mr. Stitt overruling his own objection?

THE COURT: Mr. Stitt assumed from my comments that I had overruled his objection. I find no fault in that. Now, I gather that since 1972, there have been only two categories, and I thought that was established fact for weeks.

MR. DRYFOOS: No.

MR. BERKE: Your Honor, there are two categories in the contract, and whether or not the shower maid category was ever formally incorporated into the heavy cleaner category, I would believe to be still a -- or at least the manner in which it was incorporated, to be still open.

THE COURT: Let's go on.

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MR. STITT: I refer my adversary to his own exhibit which he introduced yesterday.

THE COURT: Miss Libow, your question as put I don't think is capable of an answer. You want to put it again?

MS. LIBOW: Your Honor, I think my question is capable of answer. The University has contended all along that there is a separate category of people employed as shower maids, and that that category is only made up of women. I want to know how many.

THE COURT: Put your question again.

MS. LIBOW: How many shower maids are presently employed by Columbia University?

THE COURT: That is a different question than you put before.

MR. STITT: I would still object to the form, your Honor.

THE COURT: Yes, I will sustain the objection as to form. You want to ask how many people are called shower maids today?

Q Is it correct that only two people are employed as shower maids at the present time?

MR. STITT: I object to the form of the question.

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[1933]

THE COURT: Mr. Nye, answer that in any way you feel is appropriate.

A At this time of year there are two employees performing the work formerly handled by shower maids; paid at the rate and classification of heavy cleaner.

* * * *

[1940]

Q Mr. Nye, do you still refer to the job as shower maid at the University?

A I think it's referred to in both ways, heavy cleaner and shower maid; depending on who's using it and how long they have been here and so forth.

* * * *

[1941]

Q Is there a separate title for the people who will clean the bathrooms in what were previously male residence halls?

A They have been carried as janitors, now heavy cleaners.

Q So the men who clean bathrooms in male residence halls are referred to as janitors?

A They were in the past, yes.

Q And they are at present referred to as heavy cleaners?

A That's correct.

* * * *

* * * * [1942]

Q Can you tell us what the greatest number of shower maids employed at Columbia in the 25 years that you have been employed there was?

THE COURT: At any time?

A At any one time?

Q At any one time.

A I'd say maximum of eight.

Q Is it possible for somebody to be a shower maid for a summer and then return and become a light cleaner?

A Yes.

* * * *

[2243]

Q You testified on direct examination that some time in 1969 you observed certain chores being performed at the University; is that correct?

A That's correct.

Q Can you tell us when you observed, for example, snow shoveling during the year 1969?

MR. STITT: If your Honor please, I'm not sure I restricted snow shoveling to the year 1969. I believe the questions put to Mr. Nye were, as of November 1969, had he seen certain things done by the heavy cleaners then known as janitors, and, I don't know, 1969 might have been a year of perpetual Indian Summer, I can't remember back that far.

THE COURT: Well, Mr. Nye, let's put it this way: What was the basis of your answer that you had seen snow shoveling?

THE WITNESS: Well, periods immediately during or following snowfalls to any extent I have observed the heavy cleaners, particularly in the area of the residence halls, possibly in other areas, depending on whether I was in that vicinity at the time, shoveling snow.

Q Can you give us an idea of when you saw somebody shoveling snow?

A I'm pretty sure it was in the winter, but I can't really say.

Q You can't tell us the year?

A It would be every year if we have snow.

* * * *

[2287]

Q Mr. Nye, you testified on direct examination that the current job description is a job description that was

formulated in November 1969; is that correct?

A Correct.

Q I show you Defendant's Exhibits S and T, and I ask you if those are the job descriptions? They are, are they not?

A For the Department of Buildings and Grounds.

Q Since November 6, 1969, has there been any change in the job description?

A To the best of my knowledge, there has not.

Q But there has, has there not, been a change in the job title?

A Yes.

Q Can you tell us what those changes in title are?

A Changes in title are maid to light cleaner, janitor to heavy cleaner.

Q But there has been no other change in those job descriptions; is that correct?

A That's correct.

* * * *

Q Can you tell us when the terms heavy and light appeared for the first time?

A Officially?

Q Yes.

A 1972 contract, the contract that became effective in July 1972.

Q That term came into use after the complaints were filed at the New York State Division of Human Rights in connection with this case; is that not correct?

A That's correct.

* * * *

[2298]

xvx

CROSS-EXAMINATION

BY MR. BERKE:

* * * * [2312]

Q As to those two job descriptions, Exhibits S and T in evidence, do you know who promulgated those?

A Well, they are signed by Mr. Gardner, Director of Buildings and Grounds.

Q But you don't know that Mr. Gardner actually did or didn't write those, do you?

A Oh, yes, I am sure he did in conjunction with his staff. That's his responsibility.

Q Mr. Nye, I show you the Secretary's Exhibit No. 111 in evidence. Do you recognize it as being a schedule from the collective bargaining contract dated August 15, 1950?

A Yes, sir.

Q I refer you to the page headed "Wage and Hour

MBd38 Nye-cross [2313]

Schedule, Part-Time Employees, 24 to 46 Hour Week."

I refer you to the category on that schedule reading "Janitor (Shower Maid)."

I ask you if you know how many individuals were employed in the janitor (shower maid) category in 1950?

THE COURT: 1950?

MR. BERKE: At the time of that contract.

A During part of the year, namely, the academic year, to the best of my recollection there would have been two.

Q Back in 1950?

A Or one and a part-timer. During the summertime, there might have been as many as four to six more.

* * * *

Q Isn't it a fact that the only females being [2321]

MBd47 Nye-cross [2322]

paid on a full-time basis at a rate equal to janitors were employed in the shower maid category?

A To the best of my recollection, that's correct, on a full-time basis.

Q Mr. Nye, how many women are performing the job which was performed by shower maids back in July of 1972?

THE COURT: Is that today?

MR. BERKE: Today, yes.

THE COURT: All right.

A At the current time, to the best of my knowledge it's one full-time and one part-time.

Q And the full-time, how many hours is she working?

A As far as I know, she is still working 36 hours.

Q Still working 36 hours?

A As far as I know.

Q And the part-time?

A She would be relieving, filling in on weekends, vacation, that sort of thing.

Q Where are these shower maids employed?

A One of our residence halls, Johnson Hall.

Q Isn't it a fact that in the Residence Halls it is a training program or there is a program denominated a training program which is shorter than the one week?

MR. STITT: If your Honor please, I object to the form of the question and the inclusion in it of the term "one week." I do not believe --

THE COURT: Sustained. Ask him what they do in the Residence Halls.

Q Is there a shorter training program in the Res Halls than in the B & G, length of time?

A I can't say for sure.

Q You can't say for sure?

A As far as the exact number of days. Again, it would be of an approximate length, and it would be similar to the other.

Q So your testimony is that it's similar in approximate length, Res Halls to B & G?

A Correct.

THE COURT: He has answered, Mr. Berke.

Q On October 25th in your deposition on page 111, line 6: "Question: And are these training programs, is the same length training program applied to the Residence Halls as in the Buildings and Grounds Department?

"Answer: I think if anything it would be

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shorter.

"Question: Shorter where, sir?

"Answer: In the Residence Halls.

"Question: Why is that?

"Answer: There is not as great a variety of work required."

A That's correct, which would lead, if --

Q Do you subscribe to those?

A Yes.

Q As of now, and you were asked those questions at that time?

A Yes.

Q And you gave those answers?

A Yes.

Q The lesser variety of work that you were speaking of in the Residence Halls, that included less use of heavy machines, didn't it?

I strike the word "heavy" from my own statement. That included less use of floor machines, didn't it?

A That's correct.

Q And the floor machines that it included less of were the kind that are used for buffing and stripping?

A That is carried on to a heavier degree or greater frequency in the academic buildings.

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#9

Q There is less of it in the residence halls?

A That is correct.

Q And there is less shampooing of carpets going on in the residence halls?

A Less frequency.

Q Less frequency, and there is less ladder work in residence halls?

A No, sir.

Q I refer you again to that deposition of October 25.

MR. STITT: Page, please?

Q Page 111, line 16:

"Question: Now, when you say not as great a variety of work required, are you referring to which classification?

"Answer: Heavy cleaners primarily.

"Question: What sort of work, to your knowledge, is required in the residence halls of heavy cleaners? What work is required in the residence halls of heavy cleaners?"

Page 112: "Answer: Wet mopping and handling of rubbish and transporting in the large carts."

MR. STITT: In these large carts, I believe.

MR. BERKE: Thank you, Mr. Stitt.

Q "Cleaning the corridors, changing light bulbs,

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washing walls" --

MR. STITT: I believe it says cleaning shower and toilet rooms, cleaning the corridors.

MR. BERKE: Sorry.

Q -- "cleaning shower and toilet rooms, cleaning the corridors, changing light bulbs, washing walls, some handling of drums of various cleaning compounds, and some snow shoveling around the entrance to the residence halls, and that's about it."

Going over to page 113, lines 10 to 16:

"Question: What are the greater variety of tasks performed over in Buildings and Grounds?

"Answer: The one that comes to mind mostly is the stripping of floors, the shampooing of carpets, that sort of thing, which is almost exclusively or certainly on a more continual basis through Buildings and Grounds."

Page 113, line 12: "Question: You made a statement as to the comparative frequency, Mr. Nye, and I would like to know on what basis you make that statement.

"Answer: I am trying to tell you.

"Question: Please do, sir.

"Answer: I just mentioned one thing which is done on a regular recurring basis throughout the academic buildings, stripping, et cetera, so that if a new

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person is coming in for that type of work in Buildings and Grounds, he is going to be put through the various routines that he might be expected to follow or be able to handle, or at least check them out.

"There is also a greater need, at least in some areas, of being on ladders and handling scaffolding, all that sort of thing, because of the ceiling height in some of the academic buildings."

MR. STITT: Will you continue with the answer?

MR. BERKE: I will not.

THE COURT: If there is more to that same answer, then you will please continue.

MR. BERKE: Yes, I will. I am sorry.

"This, I don't think, with the possible exception of a couple of lounges in the residence halls, would not be true in that area, and those are the sort of things that lead to my conclusion."

Q Do you recall being asked those questions and giving those answers?

A Yes, sir.

Q Isn't it a fact there is less ladder work down in the residence halls?

A It depends on how you define it, because there are fewer residence halls, to begin with.

Q But isn't it a fact that the ceiling height in the residence halls is less than the ceiling height in most of the academic buildings?

A Not necessarily. Most of the public areas, lounges, main auditoriums, that sort of thing are where you get into ceiling heights. When you get into the upper floors of virtually -- of most of the buildings, you don't run into the same question of height.

Q You testified that the buffing machines are used less frequently in the residence halls?

A Residence halls, yes, sir.

Q And you testified that that fact was one reason why the training programs in the Res Halls was shorter?

A That's correct.

Q Are the buffing machines used in the res halls?

A Yes, but not as -- not on as regular an interval or frequency.

Q So, then, it's your testimony that if you don't use a buffing machine that often, you don't have to be trained as long in it?

A No, sir.

MR. STITT: If your Honor please --

Q That is not your testimony?

A No, sir.

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MR. BERKE: Was that objection sustained, your Honor?

THE COURT: No.

MR. STITT: I withdraw it.

THE COURT: You have an answer.

Q Mr. Nye, that mediator, Mr. Byrnes, that you mentioned before, which negotiation was he present at?

A These were the 1970 negotiations.

Q Where was Mr. Byrnes from?

A I believe it's entitled Federal Mediation Service. I am not positive.

Q Is that Federal Mediation and Conciliation Service?

A It could be. I would identify him as a federal mediator.

Q And he participated, as I recall it, in the last eight sessions of the collective bargaining agreement?

A Yes, sir.

Q And I think you said he approved the contract, did he? Is that what you said?

A I don't know that those were his exact words, but I would say that he gave every indication of feeling that the terms as finally agreed upon represented a fair conclusion to what had been some fairly difficult

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negotiations.

Q He gave a representation that was oral?

A Yes.

Q Did he give you any written opinion on the contract?

A Not to my knowledge.

Q That means any written opinion on any element of the contract.

A I don't recall any correspondence.

Q Did you request any written opinion from him?

A Not to my knowledge.

Q Did you request any written opinion from the United States Department of Labor Wage and Hour Division regarding the inequality of pay between male and female custodial employees?

MR. STITT: Your Honor, I must object to the form of that question.

THE COURT: Yes, sustained as to form.

Q Did you ask for any opinion from the United States Department of Labor Wage and Hour Division regarding the pay rates set down for janitors in the 1970 contract and the pay rates set down for maids in the 1970 contract?

A We didn't ask their opinion for any of the rates.

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MBd69 Nye-cross [2344]

Q You never asked the Wage and Hour Division?

A To the best of my knowledge, no, sir.

Q Did you discuss the Equal Pay Act with Mediator Byrnes?

A I don't specifically recall that we did.

* * * *

[2364]

Q When did you first become aware of the Equal Pay Act?

A Sometime in the 1960's.

Q Sometime in the 1960's? Would that be about, say, 1963 when it was passed?

A Possibly, probably more likely when I changed my position. At least in more detail. Which was, I believe, in 1965.

Q Did you understand that the rule of that law was equal pay for equal work?

A Absolutely.

MBd90 Nye-cross [2365]

Q At that time back in the Sixties?

A Since that time.

* * * *

[2368]

Q Mr. Nye, it is a fact, isn't it, that 55-gallon drums of wax are used less frequently in the residence halls?

A In sum total, yes, because there are fewer residence halls and a little smaller area to cover.

Q There is less floor space to wax in the res halls?

A Well, residence halls are primarily individual bedrooms, and in the normal course of events, except for maybe two or three times a year, they are not entered, so that you are talking about the vast bulk of those buildings in non-use as far as custodial help is concerned.

Q So then there is less floor space to wax?

A Right.

Q Mr. Nye, when was the last contract agreed upon between the TWU Local 241 and the University?

A I believe it was sometime in July, 1974.

Q Do you know, sir, the rates that are currently being paid to light cleaners on an hourly basis?

THE COURT: Mr. Berke, are you going to go on from that knowledge to something else?

MR. BERKE: I just want to introduce that, because the contract itself we asked for, it wasn't produced, wasn't written yet. We just want to introduce the differential.

MR. STITT: That is precisely why it hasn't been produced.

THE COURT: All right, very good.

A I can't give you the specific figure. It was, as I recall, a percentage increase.

Q Is there still a difference in pay between the

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hourly rate of the light cleaners and heavy cleaners?

A Yes.

Q And is the hourly rate of heavy cleaners still higher than the light cleaners?

A Yes.

Q And are the heavy cleaners still getting extra pay for the use of floor machines such as a buffer?

A Yes.

Q And for shampooing rugs?

A Yes.

Q Mr. Nye, let me show you Exhibit 101 in evidence, which is a map-type representation of the area of Columbia University, Morningside Heights campus, and I think most of these buildings you need not mark because they are written on the map itself.

I just want to ask a few questions about them.

540 West 114th Street, are there maids and janitors assigned to that building, light cleaners and heavy cleaners?

A To the best of my knowledge, the answer is yes.

Q Are these custodial personnel in the Buildings and Grounds Division?

A Yes.

Q Under your supervision?

A As a part of our general University Division, yes.

Q And under Mr. Shervington's supervision?

A If they are engaged in night work, yes.

Q In other words, night work for the Buildings and Grounds, they would be under Mr. Shervington?

A Yes.

Q Are there records kept at a central place on campus?

A What sort of records do you mean?

Q Records, their personnel records?

A They'd be kept in two places. One, whatever records the Department of Buildings and Grounds would have, and the other in the personnel office.

Q Where would the Department of Buildings and Grounds keep its records, what building?

A In their headquarters in Low Library.

Q This is the same place where the records of people who work in Mudd Building, Butler Library, Uris Hall, these are the same places where all these records are kept?

A All non-academic under Department of Buildings and Grounds would be in the same category.

Q Individuals employed in Mudd Building, in Uris Building, in Butler Building, they are subject, are they

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not, to being transferred to a building like 540 West 114th Street?

A If the occasion and need arose, yes.

Q They could be sent there by the supervisor, right?

A They would be assigned for maybe some special reason or permanent transfer.

Q So they might work there on a daily basis, on a single-shot basis one day, or they might be assigned there on a more permanent basis?

A It would be a relief for either illness or absence of some sort, including vacation.

* * * *

* * * * [2381]

REDIRECT EXAMINATION

BY MR. STITT:

Q Mr. Nye, on cross-examination you were asked questions about ladies whom you testified on direct examination had cleaned the shower, bathroom, toilet, and lavatory facilities at Johnson Hall and perhaps other female residences, going back for some thirty years. Do you recall that?

A Correct.

Q I believe that these ladies have been referred to, according to the testimony and exhibits, as heavy cleaners.

MR. BERKE: Objection to the leading.

THE COURT: No, overruled.

A Yes.

Q I believe it's a fair statement that we also have had them referred to as janitors and "janitor (shower

maid)," and also shower maid. Have those terms been used?

A That's correct.

Q Is it true that some of these ladies have performed their duties on a 36-hour week, and others have performed it on a spot or voluntary or summer basis?

A Yes, it's possible that they may have other schedules other than 36 hours, but to the best of my knowledge that remains.

Q I ask you, regardless of the term used in the Union agreements and in questions and answers that have been put to you, what rate of pay have these ladies been paid for doing that work over the past thirty years?

A The same hourly rate as the janitors or heavy cleaners, depending upon the year in question.

#3 Q Is that also true of light cleaners or maids in the residence halls who, over the years, have performed heavy cleaner duties on a voluntary or spot basis?

A Yes.

Q Although they haven't been given the term "shower maid" or "janitor-shower maid"?

A They have not.

MR. STITT: May I have the 1972 Union Agreement which I believe is Exhibit Walker 12?

Q Mr. Nye, I am going to draw your attention to

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the following clause which appears in Walker Exhibit 12, and the record should show I am using a copy, your Honor:

Appearing at page 30, and I quote: "19. An employee temporarily performing the work of another employee in a job classification to which a higher rate of pay is attached shall receive such higher rate for the time during which he performs the work of the employee in the higher classification."

Are you familiar with that clause, Mr. Nye?

A Yes, sir.

Q Does it appear in other Union agreements besides the 1972 Union Agreement?

A Yes, it does.

Q What agreement does it appear in, to your knowledge?

A I can't say specifically, but it's been in effect for a considerable length -- considerable number of years.

THE COURT: Mr. Stitt, don't these exhibits speak for themselves?

MR. STITT: Yes, sir, I just want to lay my hands if I can, your Honor, on the 1945 document, if my adversaries can help me.

Q Do you find that same clause in Exhibit 115,

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the agreement between the University and the Union dated October 22, 1945?

A Yes, I do.

Q Are you aware of any claims pending against the University or any grievances pursuant to that clause?

A No.

Q Have there, to your knowledge, been any claims pursuant to that clause or similar clauses in the Union agreements over the years?

A Not that I recall, although there may have been a question or two raised. I don't recall any, no.

Q But your testimony would be, if there were such claims, they have been disposed of.

MR. BERKE: I object to this on relevance.

MS. LIBOW: To this line of testimony, your Honor. I don't see its relevance to the case.

MR. STITT: I think the relevance is quite clear.

THE COURT: The relevance is quite clear.

* * * *

* * * * [2389]

THE COURT: The answer is that he doesn't remember receiving any, although it's possible they may have been initiated, but to his knowledge there were none.

Is that it?

THE WITNESS: That's correct.

Q As a final question, assuming that such claims were made, would it be your testimony that those claims were resolved?

A Yes, sir.

Q Mr. Nye, you were asked questions about Mrs. Moss and her interest in a heavy cleaner position in the latter part of January, 1972, and in particular you were shown Plaintiff's Exhibit 39, which I believe is still

MBd24 Nye-redirect [2390]

marked for identification, your Honor.

MS. LIBOW: That's correct, your Honor. At this time perhaps we can offer it into evidence.

THE COURT: Any objection?

MR. STITT: None whatever.

THE COURT: It may be received.

(Plaintiffs Walker Exhibit 39 for identification received.)

Q Mr. Nye, I place before you Exhibit 39 in evidence, and also University Exhibit B in evidence, which is Mrs. Bardax's letter to Mrs. Moss referring to an opening for janitor in the residence halls.

I ask you, is there a connection between those two exhibits?

A I believe this is the -- as I recall, this is the job in question to which she was referred, having expressed interest in this sort of position.

Q Was it your testimony that the job referred to in that posting of January 24 was the job that Mrs. Moss was offered in early February?

A Best of my knowledge, that is correct.

* * * *

[2396]

Q Mr. Nye, you were asked questions this morning by counsel for the Secretary of Labor as to certain comparisons between the Residence Halls Department and the Department of Buildings and Grounds.

Do I understand your testimony to be that there are fewer buildings in the Residence Halls Department than in B and G?

A That's correct.

Q Did you also testify that there was less floor space in the Residence Halls?

A Correct.

Q What would be the situation --

A Well, floor space for which services of this sort would be rendered.

Q Yes. Would it not also hold true for the number

of cleaning personnel required in that department?

A That's correct.

Q Fewer personnel for cleaning?

A Yes.

* * * *

xvx

CROSS-EXAMINATION [2398]

BY MR. DRYFOOS:

* * * * [2400]

Q At the time, and we fix it at 1941-1940, was there a cleaning service operation in the residence halls at Columbia University?

A As far as I know, there was, although my responsibilities were, as I said, at that point in food services.

Q Did you know whether or not there were maids employed in the residence halls?

A I am sure there were.

Q Were there persons employed known as janitors?

A Yes.

Q Did the janitors receive a higher rate of pay than the maids?

A To the best of my knowledge, the answer is yes.

Q Is it not correct that --

A I can't be specific about that.

Q But it is your recollection or your knowledge?

A That is my recollection.

Q That the janitors received higher pay than the maids, a higher rate of pay in the residence halls?

A Yes.

Q Were there also janitors and maids at that time working in the Buildings and Grounds Department or in the buildings of Buildings and Grounds of the University?

A Yes.

Q To your knowledge did janitors receive a higher rate of pay than maids?

A I have no knowledge about that.

Q Were the employees of Columbia in the titles of janitors and maids in the residence halls in 1940 represented by any labor union?

A No.

Q So that is it accurate to say that the terms

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and conditions of employment of the janitors and maids in the residence halls at Columbia University in 1940 or 1941 were the product of whatever negotiation or were the product of unilateral decision between or among the University and the individual employees?

A That was true until prior to the negotiation of the first contract.

Q Which was in 1945?

A Approximately. I am not sure of the exact year, sir.

Q I show you Secretary's Exhibit 115 in evidence, and direct your attention to Exhibit A which contains classifications, the classification schedule, and this is the agreement between Columbia University and the Transport Workers Union of America and its Local 241, and ask you if you would just peruse pages 25 and 26.

MR. STITT: Could we have the date on the face of the document?

Q Would you read the date, sir?

A October 22, 1945.

MR. STITT: Thank you.

Q Mr. Nye, what is Exhibit A?

A Exhibit A is a list of classifications covered by the bargaining agreement and their then hourly rate of

* * * *

[2406]

Q You have been shown University Exhibit S and T, S being the job description and qualifications for the position of janitor which was dated 1969, and which you testified you first saw in 1970 or 1971; and University Exhibit T, which also was drawn in 1969 and you saw on or about '70 or '71.

Can you tell within whose responsibility it is or it was to draw or to design Exhibits S and T, and if

you would like to see them, just tell me.

A Mr. John Gardner.

Q John Gardner?

A Yes.

Q Did the Transport Workers Union of America or its Local 241 have any responsibility in the initial drawing of this document?

A Not initially, but they had the opportunity of raising any questions about this or any other job qualifications, which was accentuated by the discussions that took place in various negotiations.

Q This document was drawn and was the responsibility of Mr. Gardner?

A That's correct.

Q Have Exhibits S or T at any time since 1969 been revised?

A Only to the extent, I believe, of changing the title in accordance with the contract of 1972.

Q Isn't it a fact that in the 1974 negotiations there was an agreement that new job descriptions would be drawn?

A 1974?

Q That's correct.

A I don't know for sure. There is no contract

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yet, although there is a memorandum agreement, but I am not sure about that.

Q Wasn't there an understanding that new descriptions will be drawn in 1972?

A No, sir. I think what it said was -- I forget. The phrase is in the contract, and they were a matter of record.

Q You testified about the 1970 negotiations. I would like to draw your attention initially to those negotiations. What role did Mr. Tom Kerrigan of the firm of Putney, Twombley play in those negotiations?

A He was labor counsel for the University, advising us during the course of negotiations, and I don't believe he participated in the actual negotiations between the two parties.

Q Did he review the proposals that the University made prior to their submission to the Union?

A I don't recall specifically. He certainly became aware of them either prior to or at the beginning of the negotiations.

Q Was he apprised of the final document prior to its signing by the University?

A Yes.

Q And he reviewed it?

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A He was aware of the various provisions.

Q And he functions as your, to use the term, the University's legal advisor on labor law or labor matters in that negotiation; is that correct?

A That's correct.

Q What role vis-a-vis the University did Mr. Asher Schwartz play?

A I believe that Mr. -- I would have to check the records, but it's my impression or memory that Mr. Schwartz sat in on most if not all of the negotiations between the two parties.

Q As counsel to whom?

A He was counsel for TWU, representing the organization for this purpose.

Q Not counsel for the University?

A No, sir. He was counsel for TWU. You are speaking of Asher Schwartz?

Q That's correct. Did there come a time in 1971, I believe, when a complaint was issued by the State Division of Human Rights against the University and against the Transport Workers Union?

MR. STITT: Would you repeat that question, Mr. Reporter?

(The pending question was read.)

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MR. STITT: I believe counsel will agree with me that that should read January, 1972, rather than 1971.

MR. DRYFOOS: Yes, I appreciate counsel's advice.

A In 1972, yes, 1972.

* * * *

[2444]

Q In signing either the 1972 or the 1974 collective bargaining agreement, did the University solicit the opinion of the Union as to the validity of the section which stated wage rates for janitors and maids --

MR. STITT: If your Honor please, I believe that question presupposes that the 1974 agreement has been reduced to writing and signed, and I am not sure that is correct.

Q Let's separate it and ask about the 1972 agreement, and the question is, when you signed that agreement on behalf of the University, did you sign the agreement relying on the representations made by the Union or officers of the Union or counsel of the Union as to the validity of the wage sections as it relates to janitors and maids or at that time heavy and light cleaners, the validity under

Title VII of the Civil Rights Act, the Equal Pay Act of 1963 or the Labor-Management Relations Act as amended?

A As far as my signature to the contract was concerned, it was based on my -- on the validity -- of the Union in terms of its signatures of its officers.

Q You are saying that you signed the 1972 agreement relying on the signatures of the Union officials as to its validity?

A As representing their agreement with the terms represented in the changes in the contract.

MR. DRYFOOS: I will want to inquire into that answer, your Honor.

THE COURT: Go ahead.

Q Are you saying that you signed the 1972 agreement with the knowledge that the negotiators and the signatories for the Union were signing an agreement that had been ratified by the Union membership and had met the bylaw requirements of the Union?

A Excuse me, may I have that question so I am sure I understand it?

THE COURT: Please read the question.

(The last question was read.)

A I signed it on the basis of having been informed that the membership had ratified the agreement. I can't

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apeak for the bylaws.

Q Is that what you mean by relied on the signatures of the Union signatories?

A Yes.

Q And you are not suggesting in your answer that you relied on any representation made by the Union president, vice president or counsel that any provision, particular provision of the agreement was valid or not valid?

A There was no discussion of validity at any time, to the best of my memory.

Q The University did not seek an opinion of the Union's counsel as to any validicty of any of its sections?

A No, sir.

Q The University itself determined that it was signing a valid document, did it not?

A The Union determined that it was signing --

Q The University.

A The University, excuse me, determined that it was signing an agreement that had been mutually -- a contract mutually agreed upon between the Union and the University.

Q And in its opinion was that agreement a valid one with respect to meeting federal law?

A Yes.

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Q And arriving at the opinion that it was valid with respect to federal law was not based on any opinion or representation of the Union?

A I am sorry. Will you repeat that again?

(The last question was read.)

A Only to the degree that the contract was signed by the appropriate Union officials as being an acceptable contract.

Q And your lawyers reviewed the agreement prior to your signing it?

MR. STITT: May I have that read back?

THE COURT: Your lawyers reviewed the agreement prior to your signing it?

THE WITNESS: Yes, our labor counsel did.

Q Was your labor counsel aware that an original proposal of the Union had been that the wage rates of janitors and maids be equalized at the heavy cleaner rate?

A He was aware of all the proposals submitted by the Union.

THE COURT: Mr. Dryfoos, are you going on to another subject? Because if you are, I want to ask a couple of questions in this area myself, and we can then break for lunch.

MR. DRYFOOS: Would it be permissible if I

asked a couple of questions, and while I had a chance to think, if I had another question on the same area?

THE COURT: Very good. Mr. Nye, during the 1972 negotiations, to your knowledge did any Union representative say to you in words or in substance that the proposed agreement that was being entered into would be illegal?

THE WITNESS: No, sir.

THE COURT: Did any Union official say anything to you in words or in substance that the two parties to this agreement should not sign a contract containing provisions having differentiations between the heavy cleaners and light cleaners?

THE WITNESS: No, sir.

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